Supreme Court, U.S.
FILED
991396 FEB 18 2000
OFFICE OF THE CLERK

NO. _____

IN THE
SUPREME COURT
OF THE UNITED STATES

JAMES L. CHANDLER, et al.,

Appellants,

v.

KATHERINE HARRIS, in her official capacity as Secretary of the State of Florida, et al.,

Appellees.

---

ON APPEAL FROM
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

# JURISDICTIONAL STATEMENT

---

G.J. Rod Sullivan, Jr., Esq.
Counsel of Record
Sullivan & Boyd
501 West Bay Street
Suite 100
Jacksonville, Florida 32202
(904) 355-6000
Attorney for Appellants

## QUESTIONS PRESENTED FOR REVIEW

1. Whether multiple intervenors in a voter segregation suit, none of whom assert an affirmative demand for relief, may bar a settlement between the plaintiffs and the state by withholding their consent.

2. Whether the existence of racially segregated election districts constitutes an on-going and continuing violation of the civil rights of voters where elections remain to be held in the gerrymandered districts, or where the existing districts will be used by the Department of Justice as the baseline for preclearance of new election districts under Section 5 of the Voting Rights Act, so as to preclude dismissal of the voter's suit under the doctrine of laches.

## PARTIES TO THE PROCEEDING BELOW

*Appellants/Plaintiffs*

Thomas S. Fouts
F. Evelyn McLean
James D. Moore
Carvel L. Gonzales
Harvey E. Oyer, Jr.
James L Chandler
Cecile N. Demers
Charles Bertheas

*Appellees/Defendants*

Katherine Harris, Secretary of State of Florida
Sandra Mortham, former Secretary of State of Florida
Toni Jennings, President of Florida Senate
John Thrasher, Speaker of the Florida House of Representatives
Daniel Webster, former Speaker of the Florida House of Representatives
Jeb Bush, Governor of the State of Florida
Lawton Chiles, former Governor of the State of Florida

*Appellees/Intervenors*

Congresswoman Carrie P. Meek
Congresswoman Ileana Ros-Lehtinen
Congressman Alcee L. Hastings
Congressman Peter Deutsch
Florida State Senator Daryl Jones
Florida State Senator Mandy Dawson-White
Florida State Conference of NAACP Branches
Black Business Association

Gerald Adams
George Baldwin
Ethel Beckford (dec.)
Willie Brown
Alben Duffie
Larry D. Jones
Edwin L. Miller
Frankie S. Rolle
Elry Sands
Carolyn L. Williams
M. Athalie Range
Betty T. Ferguson
Marleine Bastieu
Dr. Bradford E. Brown
Bennie Moore
Ernest Mae ("Pinky") Sands
Miriam Urra

*Amicus Curiae*

US Department of Justice, Civil Rights Division,
Voting Section

## TABLE OF CONTENTS

Questions Presented for Review . . . . . i

Parties to Proceeding Below. . . . . .ii - iii

Table of Contents. . . . . iv

Table of Authorities. . . . . v - vi

Official Report Citation. . . . . 1

Jurisdiction. . . . . 1

Constitutional Provisions, Treaties, Statutes, Ordinances, and Regulations. . . . . 1 - 2

Statement of the Case. . . . . .3

Argument. . . . . 15

Conclusion . . . . . 23

Appendix

Final Order of Dismissal . . . . . APP 1

Settlement Agreement . . . . . APP 11

Joint Motion to Approve Settlement with Memorandum . . . . . APP 20

Order [Denying Motion to Alter or Amend Judgment] . . . . . APP 25

Notice of Appeal . . . . . APP 27

## TABLE OF AUTHORITIES

**STATUTES**

28 U.S.C. §1253 ..... 1

**CASES**

*DeGrandy v. Wetherell*,
794 F.Supp. 1076 (N.D. Fla. 1992) ..... 2

*DeGrandy v. Wetherell*,
815 F.Supp. 1550 (N.D. Fla. 1992) ..... 2, 3

*Firefighters v. Cleveland*,
478 U.S. 501 (1986) ..... 9

*Johnson v. DeGrandy*,
512 U.S. 997 (1994) ..... 2

*Johnson v. Mortham*,
915 F.Supp. 1529 (N.D. Fla 1995) and 926 F.Supp. 1461
(N.D. Fla. 1996) ..... 3, 4, 5, 7

*Lawyer v. Department of Justice*,
521 U.S. 567,138 L.Ed.2d 669,
117 S.Ct. 2186 (1997) ..... *passim*

*MacGovern v. Connolly*,
637 F. Supp. 111 (D. Mass. 1986) ..... 19

*Reno v. Bossier Parish School Board*,
___ U.S. ____, Docket # 98-405
(January 24, 2000) ..... 1, 17, 20

*Shaw v. Reno*,
509 U.S. 630, 125 L.Ed.2d 511, 113 S.Ct. 2816 (1993) . . 4

*White v. Daniel*,
909 F.2d 99 (4th Cir. 1990) . . . . . 19

**TREATISES**

Report to Congress, Congressional Districts: Objectively Evaluating Shapes, written by David C. Huckabee, Analyst in American National Government, Government Division, dated May 24, 1994 . . . . . 3, 8, 13

Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances after Shaw v. Reno, 92 Mich.L.Rev. 482 (1993) . . . . . 3, 14

## OFFICIAL REPORT CITATION

There is no official report citation of the three judge panel district court decision. The decision is reproduced in the appendix.

## JURISDICTION

(i.) The Final Order of dismissal was entered by the Three Judge Court on October 25, 1999.

(ii.) The Three Judge Court's Order denying Plaintiffs' Motion to Alter or Amend Judgment and/or for Reconsideration of Final Order of Dismissal was entered on December 17, 1999.

(iii.) The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1253.

## CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

28 U.S.C. §1253: Direct appeals from decisions of three judge courts.

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

Amendment 15, United States Constitution:

The rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race...

## STATEMENT OF THE CASE

This case presents two questions for the Court's consideration: can intervenors in a voter segregation suit, none of whom assert an affirmative demand for relief, preclude a settlement between the plaintiffs and the state by withholding their consent; and does the existence of a racially segregated election district constitute a continuing violation of the civil rights of citizens who have been relegated to minority status. The plaintiffs believe that the first question was adequately answered in *Lawyer v. Department of Justice*, 521 U.S. 567, 138 L.Ed.2d 669, 117 S.Ct. 2186 (1997) and that the district court misconstrued the ruling in that case, and that the second question was adequately answered in *Reno v. Bossier Parish School Board*, ___U.S.___, Docket # 98-405 (Jan 24, 2000)[1] which had not been entered at the time the district court made its decision. To understand the issues better, it is helpful to understand the history of the creation of Florida's election districts, beginning in 1992.

The creation of Florida's State Senate districts in 1992 has previously been addressed by this court on at least two occasions. See *Lawyer*, *supra*, and *Johnson v. De Grandy*,

---

[1] The opinion can be found on the internet at http://laws.findlaw.com/US/000/98-405.html

512 U.S. 997 (1994). A distinction separates Florida's congressional redistricting history from the state senatorial redistricting. Florida's congressional districts were initially created by a federal court order. The Florida Senate districts were initially enacted by the Florida Legislature.

In 1992 a three-judge panel[2] sitting in the United States District Court for the Northern District of Florida enacted a congressional districting plan which configured the congressional district boundaries in the State of Florida to create eighteen majority white districts, three majority African-American districts (the 3rd, 17th, and 23rd districts) and two Hispanic-American districts (the 18th and 21st). See *DeGrandy v. Wetherell,* 794 F.Supp. 1076 (N.D. Fla. 1992)[3]. The result of the decision in *DeGrandy* was to make Florida's congressional districts the least compact and most dispersed

---

[2] Eleventh Circuit Judge Hatchett, District Judge Vinson, and District Judge Stafford.

[3] Hereinafter, "*DeGrandy*" refers to the district court opinion on congressional redistricting in *De Grandy v. Wetherell* 794 F.Supp. 1076 (N.D.Fla. 1992) and not the district court decision on the redistricting of the Florida Legislature in *DeGrandy v. Wetherell*, 815 F.Supp. 1550 (N.D. Fla. 1992) affirmed *sub nom Johnson v. DeGrandy*, 512 U. S. 997 (1994).

congressional districts in the nation.[4]

Florida has five counties whose electoral procedures are subject to preclearance by the U.S. Department of Justice under §5 of the Voting Rights Act, 42 U.S.C. §1973 et seq. Those counties are Collier, Hardee, Hendry, Hillsborough, and Monroe. See *DeGrandy v. Wetherell*, 815 F.Supp. 1550, 1558 fn. 7 (1992). Any changes to the 17th, 18th, or 23rd districts would entail changes to the electoral procedures in Monroe and Hendry Counties and hence would require preclearance by the DOJ.

On June 28, 1993 this Court decided the case of *Shaw*

---

[4] Rating 435 congressional districts in the country by the amount they are dispersed, Florida's 22nd is the most dispersed at 435th; followed by Florida's 3rd at 429 (prior to the 1996 redistricting after *Johnson v. Mortham*); Florida's 17th at 430; Florida's 18th at 422, and Florida's 23rd at 415. See Appendix A to Congressional Districts: Objectively Evaluating Shapes, written by David C. Huckabee, Analyst in American National Government, Government Division, dated May 24, 1994 and Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances after *Shaw v. Reno*, 92 Mich.L.Rev. 482 (1993).

For congressional districts, the dispersion and perimeter scores for congressional districts in effect from 1982-1992 are a far more accurate baseline for retrogression analysis than the districts in effect from 1992 to 2002. As District Judge Vinson stated when the districts were created "Without some objective geographical compactness standard to evaluate districts, the potential for future abuse in creating district boundaries is virtually unlimited." *DeGrandy*, 794 F.Supp at 1092, concurring opinion.

*v. Reno*, 509 U.S. 630, 125 L.Ed.2d 211, 113 S.Ct. 2816 (1993) which recognized the right of non-minority plaintiffs to assert a cause of action for violation of their civil rights arising out of the racial gerrymandering of congressional districts. After the ruling in *Shaw,* thirty-two white and Hispanic voters in North Florida challenged the court order in *DeGrandy* and filed a suit in the United States District Court, Northern District of Florida alleging that Florida's 3rd congressional district was an unconstitutional attempt to segregate voters by race. In April 1996, a three judge panel[5] agreed, see *Johnson v. Mortham*, 926 F.Supp. 1461 (N.D. Fla. 1996), and issued a ruling which found that "the direct evidence of the *DeGrandy* panel's purpose, as evidenced by its opinion, the Special Master's report and recommendation, and the independent expert's report, would support" a conclusion that the redistricting plan adopted by that court "cannot be understood as anything other than an effort to segregate voters on the basis of race"; that the segregation of

---

[5] The panel which considered the case of *Johnson v. Mortham* consisted of two of the three judges (11th Circuit Judge Hatchett and District Judge Vinson) who decided *DeGrandy*. District Judge Stafford recused himself from the *Johnson* panel citing a potential conflict of interest, and was replaced by District Judge Paul. Judge Joseph Hatchett, who was on both panels, authored the majority opinion in *DeGrandy* which gerrymandered the districts in 1992 but dissented from the majority opinion in *Johnson v. Mortham* which declared that the 1992 plan was an unconstitutional racial gerrymander.

voters by race in Florida's 3rd congressional district was unconstitutional even though it had been accomplished by a federal court order; and that the redistricting plan ordered by the court for the State of Florida in 1992 was an interim plan, only to remain in effect until the Florida Legislature enacted a suitable permanent redistricting plan. *Johnson*, 915 F. Supp. 1551.

After the entry of the court's order in *Johnson*, the Florida Legislature, which was in session in the Spring of 1996, enacted a permanent redistricting plan on May 21, 1996, thereby replacing the interim plan imposed by the court. The permanent plan altered the configuration of the 3rd congressional district, but adopted in their entirety the boundaries of the 17th, 18th, and 23rd[6] congressional districts created by the court as part of the *DeGrandy* interim plan.

On April 2, 1998, less than two years after the enactment of the permanent redistricting plan, five white and Hispanic voters in South Florida commenced this action in the Southern District of Florida against the Governor, Secretary of State, President of the Senate, and Speaker of the House of the State of Florida. The suit alleged that Florida State Senate districts 30 and 40 and congressional districts 17,

---

[6] Only the 3rd congressional district and the six districts with which it shared a common boundary were changed by the 1996 legislation.

18, and 23 were created in an unconstitutional attempt to segregate voters by race and sought an order setting aside the statutes creating the districts.

After the suit was filed, the congressmen representing the 17th, 18th, and 23rd districts, Congresswoman Carrie Meek, Congresswoman Ileana Ros-Lehtinen, Congressman Alcee Hastings, their supporters, and various interests supporting the existing Florida Senate districts, were granted leave to intervene in the action as defendants (hereinafter the "intervening defendants" or "intervenors"). The plaintiffs asserted a general objection to the intervention of non-parties because "past experience has shown the purpose of the intervention is often to attempt to influence the court to sacrifice the civil rights of the Plaintiffs to public opinion and political considerations." However, on the basis of a ruling on the same issue in *Johnson*, *supra*, at 1538 the congressmen, senators, and their supporters were permitted to intervene.

A three judge panel was appointed in January of 1999 and in March of 1999 the plaintiffs made a settlement proposal to the defendants. Under the proposal, they would withdraw their objection to the Florida Senate districts if the congressional districts in the State of Florida were redrawn using fixed mathematical criteria known as a perimeter score and a dispersion score based upon the calculations contained

in the 1994 Congressional Research Service report entitled Congressional Districts: Objectively Evaluating Shapes[7]. The limits proposed by the plaintiffs were a minimum dispersion score of .16 and perimeter score of .13, the same scores as held by the most irregular district in effect in Florida before the 1992 redistricting. The settlement proposal was favorably received by the defendants and the staff of the Florida Legislature, which had the computer equipment necessary to re-draw the districts, began preparing proposals for the parties to evaluate.

The settlement discussions were intentionally conducted without the participation of most of the intervening defendants. The decision of the plaintiffs and defendants to conduct settlement negotiations in private was based upon the understanding that the intervening defendants sought no affirmative relief in the suit and therefore were not necessary parties to the settlement. They had volunteered to join the litigation and appeared for the sole purpose of seeing that no changes were made to electoral districts, regardless of the unconstitutionality of the existing districts. It was accurately predicted that there was no settlement to which they would

---

[7] The Congressional Research Service, which published the report on objectively evaluating shapes of congressional districts, is a branch of the Library of Congress established pursuant to 2 U.S.C. §166 Subsection (d)(5).

agree.

The conclusion which the plaintiffs and the defendants reached, that the lack of consent of the intervening defendants would not preclude a settlement, was substantially based upon the principles set forth in *Lawyer v. Department of Justice*, *supra*, at 681 which stated:

> It has never been supposed that one party--whether an original party, a party that was joined later, or an intervenor--could preclude other parties from settling their own disputes. *Firefighters v. Cleveland*, 478 U.S. 501, 528-529 (1986). While appellant [Lawyer] was entitled to present evidence and have his objections heard at the hearing to consider approval of the agreement, he "does not have power to block the decree merely by withholding [his] consent."

The plaintiffs would not have entered into settlement discussions with the defendants if it was believed that the consent of the intervenors was required, since such discussions would have been futile.

In July 1999 all of the plaintiffs and all of the defendants reached a settlement. The settlement agreement

was finalized and filed with the court in August of 1999[8]. It provided that the plaintiffs would voluntarily dismiss their suit against Florida Senate Districts 30 and 40 in exchange for a redrawing of the congressional district lines in congressional districts 18, 19, and 23. Because the districts shared common boundaries with the 16th, 17th, 20th, 21st, and 22nd districts, the settlement also affected their shapes, an effect known as the "ripple effect." Based upon the settlement, a hearing on pending motions which had been set for August 23rd was canceled and the intervening defendants were given an opportunity to submit objections to the Joint Motion to Approve Settlement. The hearing on pending motions was then reset by the court for October 12, 1999.

After it had been filed, the plaintiffs received informal reports that Governor Bush, who was a signatory to the settlement, would ask the court to disapprove the settlement agreement unless the intervening defendants agreed with the

---

[8] Congressman Alcee Hastings was provided with a copy of the proposed districts on July 21, 1999.

shape of the congressional districts that would be created. In an effort to head off the Governor's objections, the plaintiffs moved to voluntarily dismiss Governor Bush as a party. On October 6, 1999 seven weeks after signing the settlement agreement and six days before the hearing on the Joint Motion to Approve Settlement, Governor Bush filed a pleading entitled "Notice of Defendant Jeb Bush" in which he "maintained that he is not a necessary party to this action and that he should be dismissed", but further stated:

> Defendant Governor Jeb Bush hereby gives notice to the Court that the "settlement agreement" signed by the undersigned counsel on his behalf has not yet been signed by all parties to the litigation [i.e. it was not signed by the intervening defendants], and thus does not represent a valid "settlement" appropriate for consideration by this Court at this time...the proper parties to any settlement would include not only the plaintiffs and the defendants, but also those who have been granted party status by virtue of the Court's order admitting them as intervenors.

The asserted basis for the Governor's decision to recommend that the district court disapprove the settlement was he learned that the intervening defendants were not

signatories to the settlement after he authorized his attorney to sign it and he then "announced he would not continue to support the settlement agreement absent agreement of all the parties, including the intervenor-parties."

In accordance with their obligations under the settlement agreement, at the commencement of the October 12, 1999 hearing, the plaintiffs voluntarily dismissed their claims as to Senate Districts 30 and 40.[9] After the voluntary dismissal of the claims regarding the Senate Districts, the Speaker of the Florida House of Representatives publically announced that he would join the position of Governor Bush that the consent of the intervenors was necessary to effect a settlement[10].

The congressional redistricting plan itself was never

---

[9] The plaintiffs had been informally advised of the Speaker's intent to join the position of the Governor an hour before the hearing.

[10] The district court asserted in its order that Katherine Harris, the Florida Secretary of State also joined the Governor's position. This is incorrect. Secretary Harris, along with the Florida Senate, continues to join in the Joint Motion to Approve Settlement without the agreement of the intervenors.

reviewed by the district court. Neither Governor Bush nor Speaker Thrasher filed motions to set aside the Joint Motion to Approve Settlement or the Joint Settlement Agreement. The district court never reached the question of whether, and under what circumstances Governor Jeb Bush and Speaker of the Florida House John Thrasher could be permitted to require the consent of the intervenors as a condition of settlement. As a result of the hearing held on October 12, 1999 the three judge court denied the Joint Motion to Approve Settlement.

The district court went on to consider the motions to dismiss on the basis of laches which had been filed by the defendants and intervenors. The plaintiffs argued that their cause of action against the State of Florida accrued when the Florida Legislature enacted the districts in 1996, that the existence of the districts was an on-going civil rights violation precluding the application of the doctrine of laches, and that the effect which the shape of the existing districts would have on the of the redistricting process after the census made dismissal inappropriate. They further argued that since their

suit had been filed two years and eight months before 2000 elections, that redistricting before those elections was not overly burdensome to the State or its voters. The district court found that since three election cycles had passed when the plaintiffs filed their suit, and one election remained before redistricting in 2002, the defendants had been prejudiced and dismissed the suit. A subsequent motion for reconsideration and/or to alter or amend judgment was denied.

## ARGUMENT

**SINCE ONLY THE PLAINTIFFS SOUGHT AFFIRMATIVE RELIEF IN THIS MATTER, THE DISTRICT COURT ERRED IN DENYING THE JOINT MOTION TO APPROVE SETTLEMENT BASED UPON THE OBJECTION OF THE INTERVENING DEFENDANTS. THE SETTLEMENT DID NOT IMPOSE DUTIES OR OBLIGATIONS ON THE INTERVENORS, NOR DID IT DISPOSE OF ANY CLAIM THEY MIGHT HAVE AND THEREFORE THEIR OBJECTION COULD NOT PRECLUDE A SETTLEMENT.**

The district court's decision to deny the Joint Motion

to Approve Settlement was based upon the dissatisfaction of the intervenors with the settlement. However, the assertion by the Governor and Speaker of the House that the consent of the intervenors was essential to effect a settlement formed an important subtext to the district court's reasoning. The plaintiffs believe, based upon *Lawyer v. Department of Justice*, 521 U.S. 567, 138 L.Ed.2d 669, 117 S.Ct. 2186 (1997), that the Governor, Speaker, and district court were incorrect in concluding that the consent of the intervenors was required. The settlement did not dispose of any right the intervenors have, it did not displace any of the incumbents out of their existing districts, nor was it a particularly drastic change to the existing districts[11]. Further, since the only basis

---

[11] The Florida Legislature did not use the same procedures for determining the perimeter and dispersion ratios which were used in the Library of Congress, Congressional Research Report to Congress, Congressional Districts: Objectively Evaluating Shapes, or in Expressive Harms, 'Bizarre Districts,' and Voting Rights: Evaluating Election-District Appearances after Shaw v. Reno, 92 Mich.L.Rev. 482 (1993). Consequently, the districts contained in the settlement agreement are not free from the vestiges of voter segregation, but represent a step in the right direction.

for the Governor's and Speaker's recommendation to the district court that the motion be disapproved was the dissent of the intervenors, the motion to approve should have been granted.

In denying the Joint Motion to Approve Settlement the district court distinguished this case from *Lawyer* by asserting that since the settlement would frustrate the objectives of the intervening defendants, it must be disapproved. However, *Lawyer* does not turn on the question of whether the settlement frustrates the intent of the objecting parties, only whether it deprives them of some right secured by law. The sole objective of the intervening defendants in this suit was to prevent the plaintiffs from gaining any relief.[12]

The Governor's defense to the approval of the settlement is that he entered into it based upon a unilateral

---

[12] The *ad damnum* clause in the answer of Congresswoman Ileana Ros-Lehtinen is representative of the objectives of each of the intervening defendants. Her request was that the district court "...dismiss the complaint with prejudice..." Neither Congressman Alcee Hastings, Congresswoman Carrie P. Meek, nor the other intervenors included a demand for affirmative relief in their answers.

mistake of fact---that the settlement was agreed to by the intervening defendants. There is no dispute that the Governor's counsel was aware that the intervening defendants were not parties to the settlement. Furthermore, there is no dispute that the consent of the intervenors was never a condition of the settlement before it was signed by the plaintiffs and the defendants and filed with the court. The Governor's representatives were aware that this Court had asserted in *Lawyer* that the consent of the intervenors was not necessary to reach a settlement and that the objection of the intervenors could not preclude a settlement between the plaintiffs and the defendants. In fact, counsel for Governor Bush successfully argued the *Lawyer* case before the Supreme Court on behalf of then Governor Lawton Chiles. Consequently, the "Notice" filed by Governor Bush was little more than a post-settlement attempt to add conditions to the settlement which were not part the initial agreement and under which a settlement could never be reached. There was no settlement proposal which altered the boundaries of the

congressional districts to which the intervenors, congressmen who benefitted from the gerrymandered boundaries and their supporters, were prepared to agree.

In order for parties in civil rights litigation to engage in meaningful settlement negotiations, they must feel confident that once an agreement is reached, and the parties have set their signatures to it, "the discretion of the federal court is limited except to the extent that the [new/stipulated] plan itself runs afoul of federal law." *Lawyer*, *supra*, at 138 L.Ed.2d at 680. If the new plan does not run afoul of federal law, the district court should approve it. The district court should have found that the consent of the intervenors was not a prerequisite to the approval of the settlement, and approved it over the argument of the Governor and Speaker, that the intervenor's consent was necessary.

**THE SEGREGATION OF VOTERS INTO ELECTION DISTRICTS BY RACE IS A DENIAL OF THE RIGHT OF A CITIZEN TO FREELY PARTICIPATE IN ELECTIONS WHICH RECUR WITH EACH ELECTION. THEREFORE LACHES IS NOT A VALID DEFENSE**

**WHERE AN ELECTION IS STILL TO BE HELD IN THE SEGREGATED DISTRICT OR WHERE THE EXISTING DISTRICTS WILL BE USED BY THE DEPARTMENT OF JUSTICE AS THE PRECLEARANCE BASELINE UNDER SECTION 5 OF THE VOTING RIGHTS ACT FOR DETERMINING WHETHER RETROGRESSION HAS OCCURRED IN THE CREATION OF NEW ELECTION DISTRICTS.**

The district court found that the plaintiffs' claims were barred by laches[13] even though the 2000 congressional elections were still a year away, the districts in effect from 1992 to 2002 would be used as a baseline or benchmark by the Department of Justice for retrogression analysis in the preclearance of the 2002 redistricting[14], and the defendants had waived the defense of laches when they entered into a

---

[13] In *Johnson v. Mortham*, 915 F.Supp at 1534, the three judge district court found that the injuries suffered by voters in Florida as a result of the 1992 racial gerrymandering were "current and ongoing."

[14] Section 51.44 of Title 42 of the Code of Federal Regulations section implementing the Voting Rights Act sets the existing voting practice as the benchmark. It states "In determining whether a submitted change is retrogressive the Attorney General will normally compare the submitted change to the voting practice or procedure in effect at the time of the submission."

settlement agreement. After the district court entered its order of dismissal, this Court published its most recent decision in *Reno v. Bossier Parish School Board*, ___U.S.___, Docket number 98-405 (Jan 24, 2000), which addressed the second of those issues. The appellees in *Bossier* argued that the case was moot because no further elections were to be conducted in the challenged districts. In the opinion, entered January 24, 2000, this court dismissed that argument stating:

> Like every other political subdivision of the State of Louisiana, Bossier Parish, because of its history of discriminatory voting practices, is a jurisdiction covered by §5 of the Voting Rights Act. See 42 U.S.C. §1973c 1973b(a), (b); 30 Fed. Reg. 9897 (1965). It is therefore prohibited from enacting any change in "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting," without first obtaining either administrative preclearance from the Attorney General or judicial preclearance from the United States District Court for the District of Columbia. 42 U.S.C. § 1973c.....appellee argues, the District Court's declaratory judgment with respect to the 1992 plan is no longer of any moment and the dispute no longer presents a live "case or controversy" for purposes of Article III of the Constitution.....**[I]n at least one respect the**

> **1992 plan will have probable continuing effect: Absent a successful subsequent challenge under §2, it, rather than the 1980 predecessor plan–which contains quite different voting districts–will serve as the baseline against which appellee's next voting plan will be evaluated for the purposes of preclearance. Whether (and precisely how) that future plan represents a change from the baseline, and, if so, whether it is retrogressive in effect, will depend on whether preclearance of the 1992 plan was proper.** [emphasis supplied]

The districts challenged in this case are subject to preclearance. Consequently, the continuing existence of segregated election districts in South Florida, and the question of whether those districts were properly precleared, will affect whether or not the 2002 redistricting plan bears any of the vestiges of the past segregation of voters.

The district court justified its dismissal of the plaintiffs case citing the cases of *White v. Daniel*, 909 F.2d 99 (4th Cir. 1990) and *MacGovern v. Connolly*, 637 F.Supp. 111 (D. Mass. 1986). Those cases are distinguished from the case at bar by the fact that the suits were either filed after the last

election had been held before redistricting, or so close to the last election that redistricting was impractical[15]. There is no mention of the continuing effect that voter segregation will have on future redistricting. In each case, the court assumes that the new districts to be created after the census will be drawn in a non-discriminatory fashion. In this case, it is known that the Department of Justice will seek to use the 1992 plan as a benchmark for the 2002 redistricting, thereby perpetuating the odd shape of the districts into the next decade, and unless challenged, *ad infinitum*.

## CONCLUSION

The plaintiffs ask this court to reverse the order of dismissal in light of this Court's decisions in *Lawyer* and

---

[15] In *White v. Daniel,* the plaintiffs asserted a voting dilution cause of action against districts which had been enacted twenty years earlier. However, the suit was filed "months after the last election under the 1981 plan took place." In that case the court determined that "no new elections will be held for Brunswick County county supervisors until November 1991" which would be after the 1990 census and redistricting had taken place. *White*, *supra*, at 103. Similarly, in *MacGovern v. Connolly*, the plaintiffs' suit was filed "less than a month before nominations were due, roughly three months before the primary, and less than eight months before the 1986 general election" *MacGovern*, *id.*, at 115. The plaintiffs suit in this case was filed two years and seven months before the 2000 election.

*Bossier* and to enter a mandate directing the district court to grant the Joint Motion to Approve Settlement, conduct the "fairness hearing" mentioned in the settlement agreement, and enter its order on the new districts contained in the settlement prior to the May 8, 2000 qualifying for congressional elections.

Respectfully Submitted,

G. J. Rod Sullivan, Jr., Esquire
SULLIVAN & BOYD
501 West Bay Street
Suite 100
Jacksonville, FL 32202
(904) 355-6000
Attorney for Appellee

# APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 98-10031-Civ-Paine

THOMAS S. FOUTS, et al.,
Plaintiffs,

vs. Three Judge Court

KATHERINE HARRIS, et al.,
Defendants.
_____/

## FINAL ORDER OF DISMISSAL

THIS CAUSE came before the Court upon the following motions: (1) Defendant Lawton Chiles' Motions to Dismiss (D.E.s 9, 11); (2) Defendant Sandra Mortham's Motion to Dismiss (D.E. 10); (3) Defendants Toni Jennings and Daniel Webster's Joint Motion to Dismiss (D.E. 13); (4) Defendant-Intervenors Daryl Jones and Mandy Dawson-White's Motion to Dismiss or For Summary Judgment (D.E. 66); (5) Meek Intervenors' Motion for Summary Judgment as to Count I (D.E. 68); (6) Florida State Conference of NAACP

Branches' Motion to Dismiss or, in the Alternative, for Summary Judgment (D.E. 69); (7) Joint Motion to Approve Settlement (D.E. 79); (8) Plaintiffs' Motion for Summary Judgment on the Liability Phase of Count I (D.E. 97); (9) Defendant-Intervenors Meek and Hasting's Motion to Strike Settlement Agreement (D.E. 105); and (10) NAACP's Motion to Reject Proposed settlement (D.E. 108). For the reasons discussed below, the Court (1) approves the dismissal of Count II and the portion of Count I relating to U.S. Congressional District 17; (2) declines to approve the purported settlement of this action; and (3) dismisses the remainder of the case based on the equitable defense of laches.

All parties were permitted to present oral argument on all of the pending motions and did so on October 12, 1999. In open court, the Plaintiffs dismissed the entirety of Count II of their Complaint as well as any claims directed to U.S. Congressional District Number 17. Upon due consideration, we permit and approve these dismissals. As a result, the motions relating to Count II and to the portion of Count I associated with U.S. Congressional District Number 17 are rendered moot and will be denied.

**DISCUSSION OF REMAINING MOTIONS**

**1. Motion for Approval of Settlement**

As a general rule, a "settlement" decree that provides

a remedy agreed to by some, but not all, of the parties cannot affect the rights of a dissenting party. *White v. Alabama*, 74 F.3d 1058, 1073-74 (11th Cir. 1996) (citing *United States v. City of Miami*, 664 F.2d 435, 442 (5th Cir. December 1981) (en banc)). Therefore,

> Parties who choose to resolve litigation through settlement may not dispose of claims of a third party... without that party's agreement. A court's approval of a consent decree between some of the parties cannot dispose of the valid claims of nonconsenting intervenors: if properly raised these claims remain and may be litigated by the intervenor.

Id. at 1074 (quoting *International Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 529 (1986)).

Most of the numerous parties to the instant case were not involved in and object to the purported Settlement Agreement. The Agreement was entered into by five parties; the Plaintiffs; the Speaker of the Florida House of Representatives Thrasher; President of the Florida Senate Jennings; Florida Governor Bush; and Florida Secretary of State Harris. None of the intervening Defendants participated in the settlement. Moreover, since the filing of the Agreement, Governor Bush, Speaker Thrasher and Secretary of State Harris have disavowed their support for the settlement. Never-the-less, the Plaintiffs continue to assert

that the settlement should be approved over the objections of the numerous dissenting parties.

The Plaintiffs argue that *Lawyer v. Dep't of Justice*, 521 U.S. 567 (1997), supports their position that all parties need not agree to the settlement. However, although *Lawyer* involves a narrow exception, it actually reaffirms the general rule that a settlement agreement cannot be used to vitiate the rights of dissenting parties. Id. at 579.

Under *Lawyer's* narrow exception, parties can agree to settle and dispose of a dissenting party's claim when, through the settlement, the dissenting party achieves the essential goals of his suit. Id. at 579-80. In such a case the Supreme Court advises that a "sore winner" looking only for the additional satisfaction of a judgment will not be permitted to block a settlement. Id. Importantly, in describing the propriety of overriding the dissenting party's desire not to settle, the Court was careful to confirm that it would be "forbidden" to settle a redistricting claim over the objections of a party who was not obtaining his requested relief. Id. at 579.

Unlike the dissenting party in *Lawyer*, in the instant case, the dissenting Defendants' objectives in defending this action would be completely frustrated by the proposed settlement. Therefore, the narrow exception outlined in *Lawyer* does not apply to this case. Accordingly, the Motion

for Approval of Settlement will be denied.[1]

**2. Motions to Dismiss**

The Defendants argue that this action should be dismissed on the ground that the Plaintiffs lack standing to bring this suit. Alternatively, they argue that the action is barred by laches.

**A. Standing**

The Defendants assert that there is no Plaintiff with standing to challenge the constitutionality of a U.S. Congressional District number 23.[2] However, the Plaintiffs allege that Plaintiff Charles Bertheas is a resident of that district. Therefore, they have adequately alleged standing with respect to that district. See *United States v. Hays*, 510 U.S. 737 (1995).

**B. Laches**

In any event, notwithstanding that sufficient, if minimal, allegations have been pled to support standing with respect to U.S. Congressional District 23, for the reasons discussed below, we conclude that laches bars this action.

To state the defense of laches, a party must show:

---

[1] The related motions to reject or strike the settlement will be granted.

[2] The Court observes that there is no challenge to the plaintiff's' standing with respect to U.S. Congressional District number 18.

1. A delay is asserting a right or claim;
2. That the delay was not excusable; and
3. That the delay caused the party "undue" prejudice.

*Citibank N.A. v. Citibanc Group, Inc.*, 724 F.2d 1540, 1546 (11th Cir. 1984).

Laches has been applied to bar actions challenging redistricting plans. See *MacGovern v. Connolly*, 637 F. Supp. 111 (D. Mass. 1986) (1986 Suit barred by laches where only viable claim challenged a 1977 apportionment plan); *White v. Daniel*, 909 F.2d 99 (4th Cir. 1990) (1988 suit barred by laches where the redistricting plan occurred in 1971 and the legislature decided not to redistrict in 1981 in light of the 1980 census).

**1. Relevant Factual Background**

U.S. Congressional Districts 18 and 23 went into effect in 1992. See *DeGrandy v. Wetherell*, 794 F. Supp. 1076 (N.D. Fla. 1992) (3 judge court). In 1993, Shaw v. Reno, 509 U.S. 630 (1993), made this type of case justiciable. There have been elections held in 1992, 1994, 1996 and 1998 based on these districts. In November of 2000, there will be one more election using the current 18th and 23rd U.S. Congressional Districts. Thereafter, the districts will be redistricted based on the 2000 census.

**2. Analysis**

**(i) Delay**

The Plaintiffs asset that there was no delay because the continuing existence of racially gerrymandered districts is an ongoing violation of citizens' constitutional rights. The Plaintiffs only cite to a single district court case in support of this argument. See *Dotson v. City of Indianola*, 514 F.Supp. 397 (N. D. Miss. 1981). Indeed, the Plaintiffs' "ongoing violation" argument is contrary to well settled reapportionment and laches case law. See e.g. *White v. Daniel*, 909 F.2d 99 (4th Cir. 1990). Therefore, the Plaintiffs' theory of "ongoing violation" fails to preclude a finding of delay. Accordingly, we find that the Defendants have established that the Plaintiffs delayed in bringing this action for at least five years.

**(ii) Excusability**

The Plaintiffs also contend that any delay in their institution of this action was excusable because they did not know they had a cause of action until 1996, when a three-judge court ordered redistricting of the 3rd U.S. Congressional District (which also had been set up by *DeGrandy* in 1992). See *Miller v. Johnson*, 926 F.Supp. 1460 (N. D. Fla. 1996) (3 judge court). However, the *Johnson* decision did not create the instant Plaintiffs' claims, it merely recognized them. Therefore, this argument does not serve to excuse the Plaintiffs' delay in bringing this action.

**(iii) Prejudice**

Prejudice may be established by showing a disadvantage to the Defendants in asserting or establishing a claim, or some other harm caused by detrimental reliance upon the Plaintiffs' conduct. *White*, 909 F.2d at 102.

The Defendants assert that they are prejudiced by the Plaintiffs' delay in bringing this action because (1) over the six years and three election cycles voters have come to know their districts and candidates, and will be confused by change; and (2) requiring redistricting now, before the 2000 census will result in two redistrictings within a two year period, with resulting voter confusion, instability, dislocation, and financial and logistical burden on the state.

The dangers of such frequent redistrictings were the basis for the *White* court's decision to impose the defense of laches. The *White* court stated:

> [i]f we affirm the district court's order, the Board will be required to reapportion itself this year and it will probably be required to do so again next year, when the results of the 1990 census are available. We believe that two reapportionments within a short period of two years would greatly prejudice the County and its citizens by creating instability and dislocation in the electoral system and by imposing great financial and logistical burdens.

*White*, 909 F.2d at 104 (emphasis added).

Moreover, if the Court were to impose redistricting before the 2000 census, such redistricting would necessarily be based upon 1990 census figures. Such old census figures have been recognized as unduly prejudicial because they fail to provide a basis for "fair and accurate representation for the citizens." *White*, 909 F.2d at 104.

Therefore, the defendants have established each of the three elements necessary to assert the defense of laches. Accordingly, the motions to dismiss will be granted as to that issue.

**CONCLUSION**

For the foregoing reasons, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Plaintiffs' *ore tenus* dismissal of portions of their Complaint is APPROVED; accordingly, Count II and the portion of Count I relating to U. S. Congressional District Number 17 are DISMISSED;

2. Joint Motion to Approve Settlement (D. E. 79); and Plaintiffs' Motion for Summary Judgment on the Liability Phase of Count I (D. E. 97) are DENIED;

3. Defendant-Intervenors Meek and Hastings' Motion to Strike Settlement Agreement (D. E. 105); NAACP's Motion to Reject Proposed Settlement (D. E. 108) are GRANTED;

4. Defendant Lawton Chiles' Motions to Dismiss (D. E.s 9, 11); Defendant Sandra Mortham's Motion to Dismiss (D. E. 10); Defendants Toni Jennings and Daniel Webster's Joint Motion to Dismiss (D. E. 13); Florida State Conference of NAACP branches' Motion to Dismiss or, in the Alternative, for Summary Judgment (D. E. 69); are GRANTED; accordingly, Count I, in its entirety, is DISMISSED;

5. Defendant-Intervenors Daryl Jones and Mandy Dawson-White's Motion to Dismiss or for Summary Judgment (D. E. 66) ; and Meek Intervenors' Motion for Summary Judgment as to Count I (D. E. 68); are DENIED AS MOOT;

6. This case is closed and any pending motions, not otherwise resolved, are DENIED AS MOOT.

DONE AND ORDERED in chambers at West Palm Beach, Florida, this 25th Day of October, 1999.

Honorable Rosemary Barkett
United States Circuit Judge

Honorable Donald Graham
United States District Judge

Honorable James C. Paine
Sr. United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

THOMAS S. FOUTS, et al,

Plaintiffs,

v. CASE NO.: 98-10031-Civ-Paine

Three Judge Court

SANDRA MORTHAM, et al,

Defendants.

---

**SETTLEMENT AGREEMENT**

1. Plaintiffs, registered voters in Monroe, Miami Dade, Broward, and Palm Beach County, Florida, filed suit on April 12, 1998, seeking a declaratory judgment that the U.S. Congressional Districts 17, 18 and 23 and Florida State Senate Districts 30 and 40 are racial gerrymanders that violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution as recognized in *Shaw v. Reno*, 113 S. Ct. 2816 (1993) and *Miller v. Johnson*, 115 S. Ct. 2475 (1995).

2. Defendants and Defendant-Intervenors deny

these assertions.

3. The parties nonetheless do agree, for the purpose of settlement only, that there is a reasonable factual and legal basis for the plaintiffs' claims as it relates to U.S. Congressional Districts 17, 18 and 23, based upon the following stipulated facts:

(a) These congressional districts were established in 1992 by the United States District Court for the Northern District of Florida in *DeGrandy v. Wetherell,* 794 F. Supp. 1076 (N.D. Fla. 1992) ("DeGrandy Panel") and later adopted by the Florida Legislature. The independent expert assembled the apportionment plan adopted by the Court from portions of other plans to create District 17 as a majority African-American district; District 18 as a super-majority Hispanic district; and District 23 as an African-American influence district. *See* 794 F.Supp. at 1087, 1088.

(b) After the United States Supreme Court decisions in *Shaw v. Reno* and *Miller v. Johnson,* the U.S. District Court for the Northern District of Florida ruled that District 3, which was created pursuant to the same congressional plan that created the districts at issue here was a racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment. *See, Johnson v. Mortham,* 915 F.Supp. 1529 (N.D. Fla. 1995).

(c) The Court in *Johnson* stated that "the

direct evidence of the DeGrandy panel's purpose, as evidenced by its opinion, the Special Master's report and recommendation, and the independent expert's report, would support" a conclusion that the redistricting plan adopted by that court "cannot be understood as anything other than an effort to segregate voters on the basis of race." *See* 915 F.Supp. At 1551.

(d) Based upon a review of the Court's Opinions in *DeGrandy v. Wetherell* and *Johnson v. Mortham* and the evidence presented in those two cases, including the special masters report, the parties agree that there is a reasonable factual and legal basis for the Plaintiffs' claims as they relate to Congressional districts 17, 18 and 23.

4. The parties further agree, for the purpose of settlement only, that there is not an adequate factual and legal basis for the plaintiffs' claim as it relates to the Florida Senate Districts 30 and 40, based upon the following stipulated facts.

(a) Unlike the Congressional districts, the Florida Senate districts in question were enacted by the Florida Legislature and were not subsequently modified by the courts. The districts reflect the end-product of a complex legislative process that involved a variety of competing interests.

(b) As a part of the overall redistricting process, the Florida Legislature commissioned, organized,

and developed a series of community outreach efforts, including two public hearings in the vicinity of each of the challenged districts. The Florida Senate district plan emerging from the Legislature reflected, to a large extent, an attempt to create districts representative of the State's diverse communities of interests.

1. **Florida Senate District 40**

(c) Florida Senate District 40 covers Monroe County, including the Florida Keys, and reaches into predominately Democratic areas of Miami-Dade County to create a district that is predominately Democratic. It is not predominately African-American. The voting age population of the District is 32.9% non-Hispanic Black and 23.4% Hispanic

(d) The Florida Legislature, in crafting Senate District 40, paid particular attention to the needs of the residents of the area by establishing a district in which their special interests and concerns would most likely be represented, while attempting to effectuate the traditional redistricting principles of compactness, regularity, and contiguousness. The shape of the district recognizes the integrity of county and city political subdivision boundaries, and is reasonably compact.

(e) The Florida Legislature, in crafting Senate District 40, also attempted to bring together

communities of interest. The residents of District 40 share common concerns, including but not limited to, sensitivity to agricultural, environmental and marine issues.

2. **Florida Senate District 30**

(f) Florida Senate District 30 unites the inner city communities along the urban corridor between the cities of West Palm Beach and Ft. Lauderdale.

(g) The Florida Legislature, in crafting District 30, recognized a commonality of interest within the District's communities that reflects the unique history of development in South Florida, where urban development occurred initially in strip along the major rail and highway corridors.

(h) As a result, the urban corridor in Broward and Palm Beach Counties has a distinct socio-economic profile, significantly different form the more affluent and more elderly populations in the suburban areas to the west and the coastal communities to the east. The urban corridor is predominated by commercial developments and low-income urban communities. As a result, these communities share many of the same common interests and concerns, including, but not limited to, economic redevelopment, the impact of suburban sprawl, and infrastructure improvements to address the aging roads, public utilities and schools.

(i) The District tracts a regular pattern along the urban corridor while attempting to effectuate the traditional redistricting principle of compactness, regularity and contiguousness.

(j) Although both parties acknowledge that race was a factor in crafting the District, the evidence reviewed by both parties, including the pertinent legislative record and court documents related to the 1992 Florida redistricting process, demonstrates that the design of District 30 was influenced significantly by political considerations and race was not the predominate factor.

(k) Based on these stipulated facts and the evidence reviewed by the parties, including legislative records related to the 1990-1992 redistricting process, the parties agree that the creation of Florida Senate Districts 30 and 40 does not infringe on the plaintiff's 14th and 15th amendment rights.

5. The parties also recognize that a settlement of the issues raised in this case will conserve resources, reduce risk, and obtain certainty and finality.

6. The parties therefore agree to a modification of the current Congressional redistricting plan (Plan 412) in the manner detailed in Appendix A and agree that pending the changes that will be required by the 2000 census, no modification is necessary to the current Florida Senate

redistricting plan.

7. The parties also agree that they will request that members of the public be given an opportunity to review this revised plan and express their views on the Settlement Agreement at a fairness hearing to be held before the three judge panel appointed to hear this case.

8. By agreeing to this settlement, plaintiffs agree to a complete settlement of this case and any constitutional claims they may have to the present congressional and state senate districts as modified herein.

9. The parties agree that out-of-cycle elections are unnecessary.

10. The plan finally approved by the Court will be used in congressional elections until the State of Florida enacts a new plan in accordance with the 2000 census and the requirements of federal and state law.

DATED this 17th day of August, 1999.

ORIGINAL SIGNED

DAVID PAUL HORAN, ESQ.
Horan & Horan
608 Whitehead St.
Key West, FL 33040-6549
(305) 294-4585
Counsel for Plaintiffs
and
GERARD JOSEPH SULLIVAN, JR.
Florida Bar No. 356794
Sullivan & Boyd

Post Office Box 4519
Jacksonville, FL 32201
(904) 355-6000
Co-Counsel for Plaintiffs

ORIGINAL SIGNED
PETER M. DUNBAR
Florida Bar No.: 146594
CYNTHIA S. TUNNICLIFF
Florida Bar No.: 134939
Pennington, Moore, et al.
215 South Monroe Street
2nd Floor (32301)
P.O. Box 10095
Tallahassee, FL 32302-2095
(850) 222-3533
and
D. STEPHEN KAHN
Office of the Senate President
409C The Capitol, Room 406
Tallahassee, FL 32399-1300
(850) 487-5237
Counsel for Defendant Toni Jennings

ORIGINAL SIGNED
THOMAS R. TEDCASTLE
Florida Bar No.: 245291
Office of the Speaker of the House
420C The Capitol
402 South Monroe Street
Suite 826
Tallahassee, FL 32399-1300
and
PAUL M. HAWKES
P.O. Box 67
Crystal River, FL 34423
(352) 563-2200

Counsel for the Defendant
John Thrasher, as
Speaker of the FL House of Representatives

ORIGINAL SIGNED
GEORGE L. WAAS
Florida Bar No.: 129967
Assistant Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
Counsel for Defendant Jeb Bush,
as Governor

ORIGINAL SIGNED
GERALD CURINGTON
Assistant Deputy Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
C0ounsel for Defendant Katherine Harris,
as Secretary of the State of Florida

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

THOMAS S. FOUTS et al,

Plaintiffs,

v. CASE NO.: 98-10031-Civ-Paine
Three Judge Court

SANDRA MORTHAM, et al,

Defendants.

---

**JOINT MOTION TO APPROVE SETTLEMENT WITH MEMORANDUM**

Comes now Plaintiffs and Defendants, together with those Intervenors who have joined herein, and respectfully requests that this Court approve the Settlement Agreement and enter the proposed order attached hereto to resolved the above styled case as follows:

1. Plaintiffs filed their Complaint alleging that Congressional Districts 17, 18, and 23 and Florida Senate Districts 30 and 40 were racial gerrymanders in violation of the Fourteenth Amendment to the United State Constitution.

2. Defendants and Defendant-Intervenors do not admit that either the congressional district or the Florida

senate districts are racial gerrymanders. For the purpose of settlement, however, the Defendants and the undersigned Intervenors agree that there is a reasonable factual and legal basis for Plaintiffs' claims as they relate to Congressional Districts 17, 18 and 23 and have signed a Settlement Agreement and filed it in Court, along with a map of the settlement plan accompanying statistics.

3. The Settlement Agreement provides for modification to the current Congressional District boundaries in the south Florida area and leaves the Florida senate districts intact. The Agreement modifies Congressional Districts 17, 18 and 23 and as a result of the changes, surrounding districts are modified to a minimal degree. The settlement plan complies with the constitution while minimizing disruption to the existing plan and resolves all claims and issues in this case.

4. Under the terms of the Agreement, the parties contemplate that the Court would hold a fairness hearing at which members of the public would be given an opportunity to express their view.

5. The settlement resolves the concerns raised by Plaintiffs in their Complaint in a manner that causes minimal disruption to the State redistricting plan, and this minimally affects third parties. The resulting plan is fair, reasonable, and does not violate federal law. For these

reasons, this Court should adopt the plan by entry of a final order at the conclusion of the fairness hearing.

WHEREFORE, the Plaintiffs and Defendants, together with the undersigned Intervenors, respectfully request that the Settlement Agreement filed herewith be approved and the plan submitted in accordance with the Agreement be adopted as the Congressional distributing plan.

DATED this 17th day of August, 1999.

ORIGINAL SIGNED
DAVID PAUL HORAN, ESQ.
Horan & Horan
608 Whitehead St.
Key West, FL 33040-6549
(305) 294-4585
Counsel for Plaintiffs
and
GERARD JOSEPH SULLIVAN, JR.
Florida Bar No. 356794
Sullivan & Boyd
Post Office Box 4519
Jacksonville, FL 32201
(904) 355-6000
Co-Counsel for Plaintiffs

ORIGINAL SIGNED
PETER M. DUNBAR
Florida Bar No.: 146594
CYNTHIA S. TUNNICLIFF
Florida Bar No.: 134939
Pennington, Moore, et al.
215 South Monroe Street
2nd Floor (32301)

P.O. Box 10095
Tallahassee, FL 32302-2095
(850) 222-3533
and
D. STEPHEN KAHN
Office of the Senate President
409C The Capitol, Room 406
Tallahassee, FL 32399-1300
(850) 487-5237
Counsel for Defendant Toni Jennings

ORIGINAL SIGNED
THOMAS R. TEDCASTLE
Florida Bar No.: 245291
Office of the Speaker of the House
420C The Capitol
402 South Monroe Street
Suite 826
Tallahassee, FL 32399-1300
and
PAUL M. HAWKES
P.O. Box 67
Crystal River, FL 34423
(352) 563-2200
Counsel for the Defendant
John Thrasher, as
Speaker of the FL House of Representatives

ORIGINAL SIGNED
GEORGE L. WAAS
Florida Bar No.: 129967
Assistant Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
Counsel for Defendant Jeb Bush,
as Governor

ORIGINAL SIGNED
GERALD CURINGTON
Assistant Deputy Attorney General
PL-01 The Capitol
Tallahassee, FL 32399-1050
(850) 414-3300
Counsel for Defendant Katherine Harris,
as Secretary of the State of Florida

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 98-10031-Civ-Paine

THOMAS S. FOUTS, et al.,

Plaintiffs,

v. Three Judge Court

KATHERINE HARRIS, et al.,

Defendants.
_____/

**ORDER**

THIS CAUSE comes before the Court upon the Plaintiffs' Motion to Alter or Amend Judgment and/or for Reconsideration of Final Order of Dismissal on Grounds of Laches, filed November 4, 1999. The Plaintiffs seek to have the Court reconsider its dismissal of this case. As their principal grounds for such reconsideration, the Plaintiffs assert that "there is no basis for the application of the doctrine of laches in a case alleging any violation of voting rights act." Motion, p.2.

This is the third time that the Plaintiffs have made this argument. It has been rejected before, and raises nothing new here. Moreover, in making this argument for the third time,

the Plaintiffs once again utterly fail to address the case law cited by this Court in support of the application of laches to the instant case. See *White v. Daniel*, 909 F.2d 99 (4th Cir. 1990); *MacGovern v. Connolly*, 637 F. Supp. 111 (D. Mass. 1986).

Therefore, upon due consideration, it is

ORDERED AND ADJUDGED that Plaintiffs' Motion to Alter or Amend Judgment and/or for Reconsideration of Final Order of Dismissal on Grounds of Laches, filed November 4, 1999, is DENIED.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 16th day of December, 1999.

ORIGINAL SIGNED
HONORABLE ROSEMARY BARKETT
UNITED STATES CIRCUIT JUDGE

ORIGINAL SIGNED
HONORABLE DONALD GRAHAM
UNITED STATES DISTRICT JUDGE

ORIGINAL SIGNED
HONORABLE JAMES C. PAINE
SR. UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION

James L. Chandler, et. al.,

Plaintiffs

v.

KATHERINE HARRIS, in her official capacity as Secretary of the State of Florida, et. al.

Defendants.

CONGRESSWOMAN CARRIE P MEEK, M. ATHALIE RANGE, BETTY T. FURGUSON, MARLEINE BASTIEN, DR. BRADFORD E. BROWN, BENNIE MOORE, ERMEST, MAE ("PINKY") SANDS, and MIRIAM URRA.

Defendants-Intervenors

_____/

NIGHT BOX
FILED

JAN 13 2000

Case No.: 98-10031
Civ-Paine
Three Judge Court

**NOTICE OF APPEAL**

COME NOW the Appellants, JAMES L. MOORE, et al., Plaintiffs in the above named case, in accordance with 42 U.S.C. §2284, and pursuant to Rule 18 o fthe Rules of the Supremem Court, hereby files this notice of appeal and hereby appeals the Final Order of Dismissal filed October 25,

1999, where the Three Judge Court entered an Order on December 17, 1999, disposing of and ruling against Plaintiffs' Motion to Alter or Amend Judgment and / or Reconsideration of Final Order of dismissal on Grounds of Laches, making this matter ripe for appeal as a matter of right directly to the United States Supreme Court

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing has been furnished to all listed on the attached Service List, via first calss United States mail this 13th day of January, 2000.

ORIGINAL SIGNED

Michael J. Goldsberry, Esquire
Florida Bar No.: 0775691
G. J. Rod Sullivan, Esquire
Florida Bar No.: 356794
501 West Bay Street, Suite 100
Jacksonville, FL 32202
(904) 355-6000
(904) 355-9438 (facsimile)

Attorney for Plaintiffs

Supreme Court, U.S.
FILED
MAR 16 2000
CLERK

(2)

No. 99-1396

IN THE SUPREME COURT OF THE UNITED STATES

---

JAMES L. CHANDLER, et al.,

Appellants,

v.

KATHERINE HARRIS, in her official capacity as Secretary of the State of Florida, et al.,

Appellees.

---

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

---

# APPELLEES' MOTION TO DISMISS OR AFFIRM

---

ROBERT A. BUTTERWORTH
Attorney General of Florida

By and Through

THOMAS E. WARNER
Solicitor General
(Counsel of Record)

The Capitol, PL-01
Tallahassee, Florida 32399-1050
(850) 414-3300

Attorneys for State Appellees

12 PP

## QUESTIONS PRESENTED
## (Restated)

1. Whether the district court properly declined to impose a settlement agreement that entailed redrawing congressional district boundary lines over the objections of numerous dissenting parties.

2. Whether under the facts found the district court properly dismissed this suit on grounds of laches.

## TABLE OF CONTENTS

QUESTIONS PRESENTED . . . . . i

TABLE OF CONTENTS . . . . . ii

TABLE OF CITED AUTHORITIES . . . . . iii

APPELLEES' MOTION TO DISMISS OR AFFIRM . . . . . 1

STATEMENT OF THE CASE . . . . . 2

ARGUMENT . . . . . 4

I. THE DISTRICT COURT CORRECTLY DECLINED TO IMPOSE A SETTLEMENT OVER THE OBJECTIONS OF DISSENTING PARTIES. . . . 4

II. UNDER THE FACTS FOUND, THE DISTRICT COURT PROPERLY DISMISSED THIS SUIT ON GROUNDS OF LACHES . . . . . 6

CONCLUSION . . . . . 7

## TABLE OF CITED AUTHORITIES


CASES — PAGE(S)

DeGrandy v. Wetherell, 794 F. Supp. 1076 (N.D. Fla. 1992) . . . . . 2

International Ass'n of Firefighters v. City of Cleveland, 478 U.S. 501 (1986) . . . . . 4

Johnson v. Mortham, 915 F. Supp. 1529 (N.D. Fla. 1995) . . . . . 3

Johnson v. Mortham, 926 F. Supp. 1461 (N.D. Fla. 1996) . . . . . 3

Lawyer v. Department of Justice, 521 U.S. 567 (1997) . . 4,5

MacGovern v. Connolly, 637 F. Supp. 111 (D. Mass. 1986) . . . . . 6

Reno v. Bossier Parish School Board, ____ U.S. ____, 120 S. Ct. 866 (2000) . . . . . 6,7

White v. Daniel, 909 F.2d 99 (4th Cir. 1990) . . . . . 6

OTHER AUTHORITIES

Chapter 96-192, Laws of Florida . . . . . 2

Section 8.0002, Florida Statutes . . . . . 3

Voting Rights Act of 1965, 42 U.S.C. § 1973 . . . . . *passim*

No. 99-1396

IN THE SUPREME COURT OF THE UNITED STATES

JAMES L. CHANDLER, et al.,

Appellants,

v.

KATHERINE HARRIS, in her official capacity as Secretary of the State of Florida, et al.,

Appellees.

---

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

---

## APPELLEES' MOTION TO DISMISS OR AFFIRM

Pursuant to Supreme Court Rule 18.6, appellees Katherine Harris, Secretary of State, Jeb Bush, Governor of Florida, John Thrasher, Speaker of the House, and Toni Jennings, President of the Senate, move to dismiss the appeal or, in the alternative, to affirm the judgment below on the grounds that the questions presented by the appellants are so insubstantial as not to warrant further argument. The decision below is based on the particular procedural history of this case and the application of settled law, including this Court's precedent. There is no conflict in case law which requires resolution.

## STATEMENT OF THE CASE

Appellants filed this action on April 2, 1998, challenging two Florida State Senate Districts and three Florida Congressional Districts (District Numbers 17, 18 and 23). They dismissed their challenge to the State Senate Districts and to Congressional District 17 in October 1999. Juris. St. at 13 and App. at 2. The actions that gave rise to appellants' attack on Districts 17, 18 and 23 date back to 1992 when district boundary lines were redrawn following the 1990 census. Appellants' presentation of subsequent events, however, obscures or misstates certain relevant facts and therefore warrants clarification.

Appellants represent that they brought this action "less than two years after the enactment of the permanent redistricting plan." Juris. St. at 7. The "permanent plan" to which appellants refer was merely the legislative adoption of approved districts, which occurred in 1996. See Chapter 96-192, Laws of Florida. The three-judge court correctly found that Districts 18 and 23 "went into effect in 1992," App. at 6, and further found that appellants "delayed in bringing this action for at least five years." App. at 7.

The three Florida congressional districts subject to appellants' original challenge--Districts 17, 18 and 23--were established by a three-judge court in 1992 after the Florida Legislature failed to adopt a congressional redistricting plan. DeGrandy v. Wetherell, 794 F. Supp. 1076, 1080-81 (N.D. Fla. 1992) (discussing the history of the 1992 congressional redistricting of Florida). These districts were first used for the 1992 election and the boundaries of Districts 17, 18 and 23 have not changed since their adoption. It was on this basis, and the lapse of more than five years, that the three-judge court below held appellants' claim to be unduly delayed and therefore barred by laches. App. at 6-9.

Appellants' Statement of the Case also fails to point out that

District 23 is the only one of the three challenged congressional districts that required Department of Justice preclearance under §5 of the Voting Rights Act of 1965, 42 U.S.C. §1973 et seq. Appellants mistakenly suggest that all of the challenged districts are subject to preclearance under §5. Juris. St. at 22 ("The districts challenged in this case are subject to preclearance.") In fact, only five of sixty-seven Florida counties--Collier, Hardee, Hendry, Hillsborough, Monroe--are subject to preclearance under §5. Juris. St. at 5. District 23 includes a small portion of Hendry County; Districts 17 and 18 do not include any portion of a covered county. The boundaries for these districts are set forth in §8.0002(17), (18) and (23), Fla. Stat. There has been no contention in this case that District 23 and other Florida congressional districts subject to preclearance under §5 were not precleared by the Department of Justice.[1]

Appellants' Statement of the Case improperly attempts to interject various facts that are not in the record below and are not relevant to the issues decided by the three-judge court. For example, appellants contend that "Florida's congressional districts are the least compact and most dispersed congressional districts in the nation." Juris. St. at 4-5 (citing law review articles). See also Juris. St. at 9-10 (purporting to set forth parties' "intent" in settlement discussions). These suggested facts are not relevant to the issue before this Court--whether the three-judge court correctly held that appellants' challenge to Districts 18 and 23 is barred by laches.

In addition, appellants' Statement of the Case fails to

---

[1]The other Florida congressional districts subject to preclearance are district 9, 11, 12, 13, 14, 16 and 20. None of those districts is at issue in this case. Of the other districts not subject to preclearance, only District 3 was subsequently challenged and its boundary revised. See Johnson v. Mortham, 915 F. Supp. 1529 (N.D. Fla. 1995); Johnson v. Mortham, 926 F. Supp. 1461 (N.D. Fla. 1996). The revisions to the boundary of District 3 did not affect the boundaries of the challenged districts in this case. Juris. St. at 7.

acknowledge the fact that although appellants filed their lawsuit before the 1998 congressional elections, they did not attempt to challenge the 1998 elections. However, it was not just the 1998 elections that stood to be disrupted by this late-filed suit. The court held that appellants' unilateral delay in bringing this action would have numerous adverse effects on the voters and the state were it to order redistricting in 2000. App. at 8. The Jurisdictional Statement does not dispute those effects, it simply ignores them.

Finally, appellants' Statement of the Case fails to point out that the redistricting they sought for the 2000 election would be based on 10-year old census data. On this point, the three-judge court held:

> [The redistricting sought by Appellants for the 2000 election] would necessarily be based upon 1990 census figures. Such old census figures have been recognized as unduly prejudicial because they fail to provide a basis for "fair and accurate representation of the citizens."

App. at 9 (citation omitted).

## ARGUMENT

### I. THE DISTRICT COURT CORRECTLY DECLINED TO IMPOSE A SETTLEMENT OVER THE OBJECTIONS OF DISSENTING PARTIES.

The decision below correctly states the general rule that a consent decree cannot dispose of the claims of nonconsenting intervenors. See International Ass'n of Firefighters v. City of Cleveland, 478 U.S. 501, 529 (1986). This Court's recent decision in Lawyer v. Department of Justice, 521 U.S. 567 (1997), does not create any relevant exception to this general rule,

and appellants' reliance on that decision is misplaced. The court below properly distinguished Lawyer. The non-settling party in that case received the relief he sought--i.e., the elimination of an unconstitutionally drawn plan. His claim therefore was satisfied. In contrast to Lawyer, here the district court found that "the dissenting Defendants' objectives in defending this action would be completely frustrated by the proposed settlement." App. at 4. In this connection, it is important to note that the intervening defendants sought, among other things, to defend the legality of all the originally challenged congressional districts. The proposed settlement would have disposed of their claims.

Appellants' argument is at best an oblique response to the court's finding. They contend only that the intervening defendants did not seek "affirmative relief." Juris. St. at 15-17. The logic of the Lawyer decision does not turn on whether a party seeks affirmative relief, and therefore the decision does not excuse appellants' failure to explain why the dissenting defendants' objectives would not have been "completely frustrated" by the proposed settlement. Appellants make no effort to do that. In fact, appellants point out that the parties who intervened as defendants would not have agreed to alteration of district boundaries that had been drawn in 1992. Juris. St. at 18-19. These are not the circumstances that obtained in the Lawyer case.

Appellants indirectly suggest that the Governor's and House Speaker's decision to withdraw their assent to the proposed settlement agreement was ineffective. Juris. St. at 17-18. This is largely beside the point in view of the participation of dissenting intervenors-defendants who never indicated agreement with the proposed settlement. The district court did not reach this issue and this Court need not consider it either, and for the same reason: the settlement was ineffective absent the joinder of the intervenor-defendants.

## II. UNDER THE FACTS FOUND, THE DISTRICT COURT PROPERLY DISMISSED THIS SUIT ON GROUNDS OF LACHES.

The district court analyzed defendants' laches argument under applicable case law and found that plaintiffs had delayed asserting their claim; that the delay was not excusable; and that the delay caused undue prejudice. App. at 6-9. Appellants do not dispute these findings nor the case law on which the panel relied. See White v. Daniel, 909 F.2d 99 (4th Cir. 1990), and MacGovern v. Connolly, 637 F.Supp. 111 (D. Mass. 1986). Their failure to do so warrants dismissal of this appeal or affirmance of the judgment of the district court.

Appellants' reliance on Reno v. Bossier Parish School Board ____ U.S. ____, 120 S.Ct. 866 (2000), which was decided three months after the district court ruled in this case, does not save the day. Asserting that "[t]he districts challenged in this case are subject to preclearance," appellants now contend that the Department of Justice will use the 1992 plan as a benchmark for the 2002 redistricting. Hence, they conclude, the "odd shape" of the districts will be perpetuated into the next decade unless challenged in future litigation. Juris. St. at 23.

Appellants never made this argument to the district court. It is fundamentally flawed in any event because the recently decided Reno decision has no application to the facts of this case. First, of course, Reno does not involve a claim of laches and therefore can neither justify nor excuse the prejudice the panel found would result from two redistrictings within a two year period--voter confusion, instability, dislocation and financial and logistical burdens on the state. App. at 8. But appellants' reliance on Reno is even more misplaced for the reason that only five of Florida's sixty-seven counties are subject to preclearance under §5 of the Voting Rights Act, whereas Louisiana is entirely covered by §5. Reno, supra, 120 S.Ct. at 868-869. Because of that fact, in Louisiana a properly precleared and valid plan would necessarily

serve as the baseline against which the next voting plan would be evaluated for purposes of preclearance. Id. at 871. Here, in contrast, two of the three congressional districts originally challenged do not embrace a covered county, and only a small portion of Congressional District 23 even touches upon a covered jurisdiction (Hendry County). The future effects of preclearance under §5 have never been an issue in this case, nor are they now as a result of the Reno decision.

Because the state of Florida is not a covered jurisdiction, it cannot be said that, for §5 preclearance purposes, Florida's current congressional districting plan must serve as a baseline or benchmark for future redistricting. At best that is pure speculation and certainly no basis for disregarding the damaging effects of immediate redistricting which were identified by the court below and which are not contested in the Jurisdictional Statement.

In sum, appellants' fear that the present boundaries for Congressional Districts 18 and 23 may be perpetuated is obviously contrived insofar as it rests on the Reno decision and §5 preclearance requirements.

## CONCLUSION

For the reasons set out in the district court's decision on appeal here, and as set out above, the appeal should be dismissed or the district court's judgment should be affirmed.

Respectfully Submitted,

ROBERT A. BUTTERWORTH
Attorney General of Florida

By and Through

THOMAS E. WARNER
Solicitor General
(Counsel of Record)

The Capitol, PL-01
Tallahassee, FL 32399-1050
(850) 414-3300

Attorneys for State Appellees

No. 99-1396

Supreme Court, U.S.
FILED
MAR 2 4 2000
CLERK

In The

# Supreme Court of the United States

JAMES L. CHANDLER, *et al.*,

*Appellants,*

v.

KATHERINE HARRIS, in her official capacity as Secretary of the State of Florida, *et al.*,

*Appellees.*

**On Appeal From The United States District Court For The Southern District Of Florida**

## MOTION TO DISMISS OR AFFIRM

MATTHEW M. STRICKLER, ESQUIRE
*Counsel of Record*
STEPHEN J. KASTENBERG, ESQUIRE
AMY B. CARVER, ESQUIRE
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Phone: (215) 665-8500
Fax: (215) 864-8999

EDWARD STILL, ESQUIRE
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1401 New York Avenue, N.W., Suite 400
Washington, D.C. 20005-0400
Phone: (202) 662-8600
Fax: (202) 783-5130

*Counsel for Florida State Conference of NAACP Branches, Black Business Association, Gerald Adams, George Baldwin, Willie Brown, Alben Duffie, Larry D. Jones, Edwin L. Miller, Frank S. Rolle, Elry Sands, Jerome Sterling, and Carolyn L. Williams*

[Additional Counsel Listed On Inside Cover]

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

22 RP

TERENCE J. ANDERSON, ESQUIRE
D. MARVIN JONES, ESQUIRE
BERNADETTE NORRIS, ESQUIRE
c/o University of Miami
School of Law
P.O. Box 248087
Room 426-27 Old Law
Coral Gables, FL 33124-8087
Phone: (305) 284-2253
Fax: (305) 284-6619

*Counsel for Congressman Alcee L. Hastings, Lois Frankel, Howard Coleman, Rosa Cruz, Janet Taylor, Tom Gustafson, Ken Jenne, Harold Blitzman, and Robert Coker*

PAUL M. SMITH, ESQUIRE
HEATHER GERKEN, ESQUIRE
JENNER & BLOCK
601 13th St., N.W., Suite 1200
Washington, D.C. 20005
Phone: (202) 639-6000

*Counsel for Congressman Peter Deutsch*

THOMAS TEW, ESQUIRE
JOSEPH A. DEMARIA, ESQUIRE
Miami Center, Suite 2600
201 S. Biscayne Boulevard
Miami, FL 33131
Phone: (305) 536-1112
Fax: (305) 536-1116

*Counsel for Congresswoman Ileana Ros-Lehtinen*

J. GERALD HEBERT, ESQUIRE
P.O. Box 22827
Alexandria, VA 22304
Phone: (703) 567-5873
Fax: (703) 567-5876

THOMASINA WILLIAMS, ESQUIRE
80 S.W. 8th Street,
Suite 1830
Miami, FL 33130
Phone: (305) 379-6676
Fax: (305) 379-4541

*Counsel for Congresswoman Carrie P. Meek, M. Athalie Range, Betty T. Ferguson, Marleine Bastieu, Dr. Bradford E. Brown, Bennie Moore, Ernest ("Pinky") Sands, and Miriam Urra*

## QUESTIONS PRESENTED

1. Whether this appeal must be dismissed because the Notice of Appeal failed properly to "specify the parties taking the appeal," as required by this Court's Rule 18.1.

2. Whether a settlement may adversely dispose of the rights of defendants who object to the settlement.

3. Whether the doctrine of laches can properly be applied to a challenge to the configuration of United States Congressional Districts.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED ..... i

TABLE OF AUTHORITIES ..... iii

STATEMENT OF THE CASE ..... 1

ARGUMENT ..... 5

I. Because the Notice of Appeal Fails to Specify the Parties Taking the Appeal as Required by Rule 18.1, This Appeal Must Be Dismissed .. 5

II. A Settlement May Not Dispose of the Rights of Defendants Without Their Consent ..... 7

III. The District Court Properly Applied the Doctrine of Laches ..... 10

CONCLUSION ..... 14

# TABLE OF AUTHORITIES

Page

CASES

*Allen v. State Board of Elections*, 393 U.S. 544 (1969) .... 12

*Allen v. Wright*, 468 U.S. 737 (1984) ..... 12

*DeGrandy v. Wetherell*, 794 F. Supp. 1076 (N.D. Fla. 1992) ..... 1

*Growe v. Emison*, 507 U.S. 25 (1993) ..... 9

*Hunt v. Cromartie*, ___ U.S. ___, 119 S. Ct. 1545 (1999) .....8, 13

*Lawyer v. Department of Justice*, 521 U.S. 567 (1997) ...8, 9

*Local Number 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501 (1986) ..... 8

*Lopez v. Hale County*, 797 F. Supp. 547 (N.D. Tex. 1992) ..... 11

*Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) .... 13

*MacGovern v. Connolly*, 637 F. Supp. 111 (D. Mass. 1986) ..... 11

*Maryland Citizens for a Representative General Assembly v. Governor of Md.*, 429 F.2d 606 (4th Cir. 1970) ..... 11

*Reno v. Bossier Parish School Board*, ___ U.S. ___, 120 S. Ct. 866 (Jan. 24, 2000) ..... 11, 12, 13, 14

*Reynolds v. Sims*, 377 U.S. 533 (1964) ..... 11

*Shaw v. Reno*, 509 U.S. 630 (1993) ..... 1

*Smith v. Clay*, Ambler, 645 ..... 10

*Sullivan v. Portland Kennebec Railroad Co.*, 94 U.S. 806 (1876) ..... 10

TABLE OF AUTHORITIES – Continued

Page

*Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988) . . . 5, 6

*United States v. Hays*, 510 U.S. 737 (1995) . . . . . 2, 12

*White v. Daniel*, 909 F.2d 99 (4th Cir. 1990) . . . . . 11

*Wise v. Lipscomb*, 437 U.S. 535 (1978) . . . . . 9

OTHER AUTHORITIES

Fed. R. App. P. 3(c) (amended 1993) . . . . . 5

Sup. Ct. R. 18.1 . . . . . 5

## MOTION TO DISMISS OR AFFIRM

Certain Intervenor Appellees,[1] through their undersigned counsel, move to dismiss on the ground that plaintiffs' counsel failed to file a sufficient notice of appeal and, in the alternative, to affirm on the ground that the questions presented in the Jurisdictional Statement are so insubstantial as to not need further argument.

## STATEMENT OF THE CASE

This action currently challenges the constitutionality of two Congressional districts in south Florida, the 18th and the 23rd, under the principles of *Shaw v. Reno*, 509 U.S. 630 (1993). Those two Congressional districts were originally promulgated in 1992 by a panel of three federal judges as a remedy for its finding that Florida's Congressional Districts were unconstitutional. *DeGrandy v. Wetherell*, 794 F. Supp. 1076 (N.D. Fla. 1992). Those Districts were ratified in 1996 when the Florida Legislature reenacted them without change. Congressional elections

[1] The Intervenor Appellees are: Florida State Conference of NAACP Branches, Black Business Association, Gerald Adams, George Baldwin, Willie Brown, Alben Duffie, Larry D. Jones, Edwin L. Miller, Frank S. Rolle, Elry Sands, Jerome Sterling, Carolyn L. Williams, Congresswoman Carrie P. Meek, M. Athalie Range, Betty T. Ferguson, Marleine Bastieu, Dr. Bradford E. Brown, Bennie Moore, Ernest ("Pinky") Sands, Miriam Urra, Congressman Alcee L. Hastings, Lois Frankel, Howard Coleman, Rosa Cruz, Janet Taylor, Tom Gustafson, Ken Jenne, Harold Blitzman, Robert Coker, Congresswoman Ileana Ros-Lehtinen, and Congressman Peter Deutsch.

were held using those Districts in 1992, 1994, and 1996 without legal challenge.

The present action is the brainchild of the lead plaintiff in the District Court, Thomas Fouts. The original Complaint, as filed on April 2, 1998, challenged three Congressional Districts and two State Senatorial Districts. Plaintiffs' counsel later withdrew the challenges to one Congressional District[2] and the two State Senatorial Districts[3] in the District Court. (J.S. App. 2, 9). The original Complaint named as defendants only state officials acting in their official capacity, in particular, the Secretary of State, the President of the State Senate, the Speaker of the State House of Representatives, and the Governor. In a series of orders, the District Court granted thirty-four individuals and organizations leave to intervene as defendants to defend the legality of the existing Districts.[4] After the Complaint was filed, the 1998 elections

---

[2] The Jurisdictional Statement refers to the 17th, 18th and 23rd Congressional Districts without differentiating among them. In the District Court, the plaintiffs voluntarily dismissed their challenge to the 17th Congressional District (J.S. App. 2, 9) after defendants objected that none of them reside in that District as required under *United States v. Hays*, 510 U.S. 737 (1995).

[3] The Jurisdictional Statement suggests (page 13) that the withdrawal of the challenges to the two State Senatorial Districts was contingent on the approval of the settlement. The Opinion and Order of the District Court (J.S. App. 2, 9) make it clear that that withdrawal was unconditional.

[4] The intervenors include (i) the three Congressional Representatives and two State Senators whose districts were being challenged, (ii) registered voters, and (iii) the Florida State Conference of NAACP Branches and the Black Business

were held without any effort by the plaintiffs to obtain preliminary injunctive relief.

Because Mr. Fouts lacked standing to challenge all of the districts to which he objected, he recruited F. Evelyn McLean, James D. Moore, Carvel L. Gonzales, and Harvey E. Oyer, Jr. to join him as plaintiffs by knocking on doors and placing telephone calls to complete strangers. However, Gonzales, the sole plaintiff residing in the 17th Congressional District, and Moore, the sole plaintiff residing in the 23rd Congressional District, moved out of state in the spring of 1999. Accordingly, in the summer of 1999, Mr. Fouts sought to cure the defects in his Complaint by recruiting as plaintiffs James L. Chandler, a resident of the 18th Congressional District, and Charles Bertheas,[5] a resident of the 23rd Congressional District.[6]

---

Association. The District Court also permitted a Congressman from an adjoining District to intervene solely on issues of relief and the Department of Justice to appear as amicus curiae.

[5] Mr. Bertheas, the newly added, and sole, plaintiff residing in the 23rd Congressional District, first met Mr. Fouts on July 9, 1999. Mr. Bertheas was walking down the street when Mr. Fouts, who was in his car, stopped and asked to talk with him. On the spot, Bertheas signed a declaration authorizing Fouts to list him as a named plaintiff in this litigation. Mr. Bertheas could not identify his Congressional representative and had not voted since 1987. (Bertheas Dep. at 17, attached as Exh. A to Memorandum in Support of Motion of NAACP for Reconsideration of Joinder of New Plaintiffs, hereinafter "Berth. Dep.")

[6] Mr. Fouts did not submit a substitute for Mr. Gonzales, the only plaintiff resident in the 17th Congressional District.

Also in the summer of 1999, the plaintiffs and the state officials originally named as defendants agreed to a purported settlement[7] and moved the District Court for its approval. In that settlement the plaintiffs agreed to abandon their challenge to the two State Senate Districts and the state officials agreed to reconfigure eight Congressional Districts, the three challenged in the Complaint and five adjoining Districts. The defendants who had intervened were not invited to participate in, and were not aware of, the settlement discussions, but filed formal objections to the purported settlement after it became public. By the time the District Court scheduled a hearing, the Governor and the Speaker of the House had disavowed their support for the settlement.[8] At the hearing on the settlement before the District Court, the Florida Attorney General urged the Court to disapprove the settlement.

---

[7] Curiously, Charles Bertheas, the sole plaintiff residing in the 23rd Congressional District, a District that would be changed by the settlement, was not aware of the settlement agreement prior to his deposition on October 1, 1999. (Berth. Dep. at 16.) The failure of plaintiffs' counsel to consult with Mr. Bertheas concerning the settlement calls into question whether he is a bona fide party to this litigation.

[8] The opinion of the District Court states that the Secretary of State had also disavowed the settlement. (J.S. App. 3). The Jurisdictional Statement (page 13, note 10) correctly states that the Secretary of State has never disavowed the settlement. This error by the District Court is immaterial in light of the continuing objection to the settlement by the intervening defendants, the Governor, the Speaker, and the Florida Attorney General.

On October 25, 1999, the District Court disapproved the Settlement and dismissed the Complaint on the grounds of laches. On December 17, 1999, the District Court denied a "Motion to Alter and Amend Judgment and/or for Reconsideration of Final Order of Dismissal on Grounds of Laches." On January 13, 2000, the plaintiffs' counsel filed a notice of appeal with the District Court and, on February 18, 2000, counsel filed a Jurisdictional Statement with this Court.

## ARGUMENT

### I. Because the Notice of Appeal Fails to Specify the Parties Taking the Appeal as Required by Rule 18.1, This Appeal Must Be Dismissed.

Rule 18.1 of this Court's Rules requires a notice of appeal to "specify the parties taking the appeal." In this respect, Rule 18.1 is almost identical to the former Rule 3(c) of the Federal Rules of Appellate Procedure.[9] This Court interpreted the former Rule 3(c) in *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988) holding that, under that Rule, the use of "*et al.*" was insufficient to "specify the parties taking the appeal":

> The purpose of the specificity requirement . . . is to provide notice both to the opposition and to

[9] Rule 3(c) formerly provided that a notice of appeal "shall specify the party or parties taking the appeal." Fed. R. App. P. 3(c) (amended 1993). That rule has since been amended to permit the use of "et al." This Court's Rule 18, however, remains unchanged and contains no language permitting the use of "et al."

> the court of the identity of the appellant or appellants. The use of the phrase "et al.," which literally means "and others," utterly fails to provide such notice to either intended recipient.

*Torres*, 487 U.S. at 318.

The Notice of Appeal filed in this case utterly fails to meet the requirements of *Torres*. The caption of the Notice identifies "James L. Chandler, et. al." as "Plaintiffs"; the text of the Notice begins with "COME NOW the Appellants, JAMES L. MOORE, et al., Plaintiffs in the above named case . . . " (J.S. App. 27). From this notice, the reader learns only that (1) the "Appellants" are a subset of the "Plaintiffs", (2) that subset includes a plaintiff James L. Moore,[10] and (3) that subset does not include James L. Chandler, the "plaintiff" listed first in the caption.

A reader who is familiar with the history of this litigation would be totally confused. James D. Moore withdrew as a plaintiff because he moved out of state.[11] In fact, the District Court, on September 9, 1999, entered an Order to the following effect:

---

[10] In fact, there has never been a James *L*. Moore who was a plaintiff in this case. As reflected on page ii of the Jurisdictional Statement, there was, at one time, a plaintiff named James *D*. Moore.

[11] The "Supplemental Memorandum of Facts and Law and Motion to Drop Dispensable Party and Substitute Parties Plaintiff" filed by the plaintiffs' counsel in the District Court on August 24, 1999, at page 6, states:

> The original Plaintiff, JAMES D. MOORE (See Complaint at Page 3, Paragraph 5) also moved out of state.

> Accordingly, James L. Chandler, Cecile Demers, and Charles Bertheas are added as plaintiffs in substitution for former plaintiffs Carvel Gonzales and James Moore.

Clearly, James Moore cannot appeal. And the Notice does not reveal which, if any, of the remainder of the "plaintiffs" have authorized counsel to file an appeal on their behalf.[12] Because the Notice of Appeal fails to comply with this Court's Rule 18.1 by specifying the parties that have appealed, this Court must dismiss this appeal.

## II. A Settlement May Not Dispose of the Rights of Defendants Without Their Consent.

The Jurisdictional Statement seeks to have this Court accept a "settlement" that was disapproved by the District Court because of the objections of intervenor defendants and state officials. In disapproving the settlement because of the objections made by the defendants, the District Court was following the well-established legal principle that "parties who choose to resolve litigation through settlement may not dispose of the claims of a

---

[12] Referring to the "Appellants/Plaintiffs" listed at page ii of the Jurisdictional Statement, former plaintiff Carvel Gonzales also cannot appeal because he moved out of state and withdrew from the action. Plaintiffs Thomas S. Fouts, Harvey E. Oyer, Jr. and Cecile N. Demers cannot appeal because they challenged only State Senatorial Districts in Count II, which Count was voluntarily and unconditionally withdrawn in the District Court. (J.S. App. 2, 9). The only plaintiffs with standing to appeal were James L. Chandler and F. Evelyn McLean, both of whom live in the 18th Congressional District, and Charles Bertheas, who lives in the 23rd Congressional District.

third party . . . without that party's agreement." *Local Number 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 529 (1986).

The Jurisdictional Statement attempts to avoid this principle by arguing that, because the intervenor defendants did not assert an affirmative demand for relief, the settlement did not dispose of any of their claims. This argument makes no sense. Defendants who have been granted intervention to defend the status quo have legal rights as great as those of plaintiffs who wish to change the status quo. In this case, the intervenor defendants claim that the existing Congressional Districts, as promulgated by the three-judge federal court and ratified by the Florida Legislature, are legal and constitutional. Before those Districts are changed, the intervenor defendants have the right to require the plaintiffs to satisfy at trial the difficult burden of proof required by the precedents of this Court. *Hunt v. Cromartie*, ___ U.S. ___, 119 S. Ct. 1545 (1999). The District Court correctly determined that the consent of the intervenors and the support of all of the original defendants was required for any settlement.

*Lawyer v. Department of Justice*, 521 U.S. 567 (1997) does not permit a different result. Indeed, *Lawyer* reaffirmed the general rule that "a settlement agreement subject to court approval in a nonclass action may not impose duties or obligations on an unconsenting party or 'dispose' of his claims." *Id., citing Firefighters v. Cleveland*, 478 U.S. 501, 529 (1986). *Lawyer* recognized a narrow exception to this general rule, applicable only when the party objecting to the settlement achieves the essential goals of his suit through the settlement agreement:

> [The District Court] disposed of appellant's claim not in the forbidden sense of cutting him off from a remedy to which he was entitled, but only in the legitimate sense of granting him an element of the very relief he had sought. As a remedy for what appellant claimed to be an unconstitutional plan he had requested the elimination of that plan, and the settlement decree gave him that relief.

*Id.* at 579. The Court noted that permitting such a dissenter to block the settlement would allow a "sore winner," looking only for the additional satisfaction of a judgment, to obscure the point of the suit. *Id.*

Regardless, plaintiffs do not dispute that the settlement must fail upon objections by any of the Governor, state Attorney General, or Speaker of the State House, each of whom did object.[13] Indeed, this Court has held the Florida Attorney General may, as the representative of the State, veto a proposed redistricting settlement and force an adjudication on the merits. *Lawyer*, at 2193 & nts. 4 & 5, 2194; *id.* at 2197 & n.2, 2198 (Scalia, J. dissenting) (*citing Growe v. Emison*, 507 U.S. 25, 34 (1993); *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (op. of White, J.)).

---

[13] The Jurisdictional Statement (pages 12 and 13) suggests that the Governor's objection to the settlement was solely on legal grounds. Governor Bush advised the District Court that he joined the settlement "based upon the assurance that all parties including the intervenor-parties had agreed to the settlement" and that, when he learned that this assurance was untrue, he "announced he would not continue to support the settlement. . . . " (Notice of Defendant Jeb Bush at 2.)

The District Court correctly refused to consider the merits of the settlement in light of the objections of the intervening defendants and the opposition of some state officials, including the Florida Attorney General. This Court can affirm without further briefing.

## III. The District Court Properly Applied the Doctrine of Laches.

The District Court held that the plaintiffs' claims were barred by laches because of the plaintiffs' inexcusable delay of five years in bringing this action and because of the prejudice to the defendants and to the electorate of south Florida that would be caused by two Congressional redistrictings within a two year period, one for the 2000 election and another one for the 2002 election. The District Court's holding is completely consistent with the precedents of this Court.

This Court has long recognized that laches bars equitable claims where the plaintiff has failed to act in a timely fashion:

> A court of equity . . . has always refused its aid to stale demands where a party has slept upon his rights, and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence. Where these are wanting, the court is passive, and does nothing. Laches and neglect are always discountenanced; and, therefore, from the beginning of this jurisdiction there was always a limitation to suits in this court.

*Sullivan v. Portland Kennebec Railroad Co.*, 94 U.S. 806 (1876), *quoting Smith v. Clay*, Ambler, 645. This Court has

also recognized that frequent redistrictings are disruptive:

> Limitations on the frequency of reapportionment are justified by the need for stability and continuity in the legislative process. . . .

*Reynolds v. Sims*, 377 U.S. 533, 583 (1964). In a case akin to the instant case, the Fourth Circuit affirmed the dismissal by the District Court of an action seeking imposition of a state assembly redistricting remedy on the grounds that the suit had been brought too close to the decennial redistricting. *Maryland Citizens for a Representative General Assembly v. Governor of Md.*, 429 F.2d 606 (4th Cir. 1970). In so holding, the Fourth Circuit concluded that the imposition of a redistricting remedy "close upon" the final predecennial assembly election would be a "harsh decree" that would "necessarily impose great disruption upon potential candidates, the electorate and the elective process." *Id.* at 610.[14]

Accordingly, there is ample authority for the District Court's holding.

Rather than challenge directly the basis for the decision by the District Court, the Jurisdictional Statement offers this Court a red herring, the possibility of a claim under Section 5 of the Voting Rights Act as recently interpreted by this Court in *Reno v. Bossier Parish School Board*, ___ U.S. ___, 120 S. Ct. 866 (Jan. 24, 2000). The

---

[14] Other lower courts have also applied the doctrine of laches to voting rights cases. *See White v. Daniel*, 909 F.2d 99 (4th Cir. 1990); *Lopez v. Hale County*, 797 F. Supp. 547 (N.D. Tex. 1992); *MacGovern v. Connolly*, 637 F. Supp. 111 (D. Mass. 1986).

Jurisdictional Statement argues that the defense of laches cannot apply because the current Congressional Districts will have a continuing effect beyond the 2000 election as the baseline for the Department of Justice's retrogression analysis in the preclearance of the redistricting following the 2000 census. The argument is wrong for four reasons:

1. *Reno v. Bossier* holds that an action brought under Section 5 of the Voting Rights Act is not rendered moot by the holding of the last election under a districting plan subject to review under that Section. It does not address the question of laches. Whether or not *Reno v. Bossier* has any application to this case, the plaintiffs still waited five years before bringing their action, a delay for which they offer no excuse.

2. The plaintiffs remaining in this case have no standing to assert a claim under Section 5. Mr. Chandler and Ms. McLean reside in the 18th Congressional District, which is entirely within Dade County. Mr. Bertheas resides in Broward County.[15] Neither Dade nor Broward County is subject to Section 5 of the Voting Rights Act. As a result, none of the plaintiffs are included in the class that Section 5 was intended to protect. Accordingly, they lack standing to assert a claim under that Section. *See United States v. Hays*, 510 U.S. 737 (1995), *quoting Allen v. Wright*, 468 U.S. 737, 755 (1984); *Allen v. State Board of Elections*, 393 U.S. 544, 557 (1969). To state the same point

---

[15] Less than one percent of the population of the current 23rd Congressional District resides in Hendry County, which is subject to Section 5 of the Voting Rights Act. As a result, the current 23rd Congressional District was subject to the Act.

differently, whether or not the new Congressional Districts in which Chandler, McLean, or Bertheas reside will be subject to Section 5 of the Voting Rights Act will depend upon whether the Florida Legislature, after considering the 2000 census, decides to include one of their residences in a Congressional District that also includes some portion of a County subject to Section 5. These plaintiffs lack standing to make such a claim because, at present, it is entirely hypothetical. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

3. The plaintiffs in this case assert a constitutional claim. Section 5 of the Voting Rights Act is irrelevant to such a claim. Indeed, *Bossier* itself reaffirms that a Section 5 preclearance does not establish the legality of any voting districts but is "nothing more than a determination that the voting change is no more dilutive than what it replaces." *Id.* at 875-76. Thus, action by the Department of Justice under Section 5 could not prejudice plaintiffs' constitutional claims.

4. Finally, the proposed Districts at issue in *Bossier* were not legally established until they were precleared by the District Court, and it was that preclearance that was under appeal to this Court in that case. In contrast, the Districts at issue in this case were established by the Order of a District Court, ratified by the Florida Legislature, and cleared by the Department of Justice to the extent required. For that reason, the Districts challenged here are presumed valid until proven otherwise. *See Hunt v. Cromartie*, ___ U.S. ___, 119 S. Ct. 1545 (1999).

Thus, *Reno v. Bossier* has nothing to do with this case. Because the decision of the District Court to dismiss this case based on laches was well founded in the precedents of this Court, this Court may summarily affirm that decision.

## CONCLUSION

For the foregoing reasons, this appeal should be dismissed. In the alternative, this Court should affirm summarily the judgment below.

Respectfully submitted,

TERENCE J. ANDERSON, ESQUIRE
D. MARVIN JONES, ESQUIRE
BERNADETTE NORRIS, ESQUIRE
c/o University of Miami
School of Law
P.O. Box 248087
Room 426-27 Old Law
Coral Gables, FL
33124-8087
Phone: (305) 284-2253
Fax: (305) 284-6619

*Counsel for Congressman Alcee L. Hastings, Lois Frankel, Howard Coleman, Rosa Cruz, Janet Taylor, Tom Gustafson, Ken Jenne, Harold Blitzman, and Robert Coker*

THOMAS TEW, ESQUIRE
JOSEPH A. DEMARIA, ESQUIRE
Miami Center, Suite 2600
201 S. Biscayne Boulevard
Miami, FL 33131
Phone: (305) 536-1112
Fax: (305) 536-1116

*Counsel for Congresswoman Ileana Ros-Lehtinen*

MATTHEW M. STRICKLER, ESQUIRE
*Counsel of Record*
STEPHEN J. KASTENBERG, ESQUIRE
AMY B. CARVER, ESQUIRE
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
1735 Market Street,
51st Floor
Philadelphia, PA 19103-7599
Phone: (215) 665-8500
Fax: (215) 864-8999

EDWARD STILL, ESQUIRE
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1401 New York Avenue,
N.W., Suite 400
Washington, D.C.
20005-0400
Phone: (202) 662-8600
Fax: (202) 783-5130

*Counsel for Florida State Conference of NAACP Branches, Black Business Association, Gerald Adams, George Baldwin, Willie Brown, Alben Duffie, Larry D. Jones, Edwin L. Miller, Frank S. Rolle, Elry Sands, Jerome Sterling, and Carolyn L. Williams*

J. GERALD HEBERT, ESQUIRE
P.O. Box 22827
Alexandria, VA 22304
Phone: (703) 567-5873
Fax: (703) 567-5876

THOMASINA WILLIAMS, ESQUIRE
80 S.W. 8th Street,
Suite 1830
Miami, FL 33130
Phone: (305) 379-6676
Fax: (305) 379-4541

*Counsel for Congresswoman Carrie P. Meek, M. Athalie Range, Betty T. Ferguson, Marleine Bastieu, Dr. Bradford E. Brown, Bennie Moore, Ernest ("Pinky") Sands, and Miriam Urra*

PAUL M. SMITH, ESQUIRE
HEATHER GERKEN, ESQUIRE
JENNER & BLOCK
601 13th St., N.W.,
Suite 1200
Washington, D.C. 20005
Phone: (202) 639-6000

*Counsel for Congressman Peter Deutsch*

Supreme Court, U.S.
FILED
APR 7
CLERK

(4)

No. 99-1396

In The

# Supreme Court of the United States

JAMES L. CHANDLER, et al.,

*Appellants,*

v.

KATHERINE HARRIS, in her official capacity as Secretary of the State of Florida, et al.,

*Appellees.*

**On Appeal From United States District Court Southern District Of Florida**

## APPELLANTS' RESPONSE TO MOTIONS TO DISMISS OR AFFIRM

G.J. Rod Sullivan, Jr., Esq.
*Counsel of Record*
Sullivan & Boyd
501 West Bay Street
Suite 100
Jacksonville, Florida 32202
(904) 355-6000
*Attorney for Appellants*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

Table of Authorities ..... ii

Statement of the Case ..... 1

Argument ..... 6

Conclusion ..... 8

Appendix I ..... App. 1

# TABLE OF AUTHORITIES

Page

CASES

*Faust v. U S*, 163 U.S. 452 (1896) ..... 6

*Johnson v. Mortham*, 915 F.Supp. 1529 (N.D. Fla. 1995) ..... 3, 4

*McAninch v. Traders Nat'l Bank*, 779 F.2d 466 (8th Cir. 1985) ..... 7

*Reno v. Bossier Parish School Board*, ___ U.S. ___, 120 S.Ct. 866 (2000) ..... 5, 8

*Smith v. Barry*, 502 U.S. 244 (1992) ..... 7

*Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 108 S.Ct. 2405 (1988) ..... 2, 7, 8

STATUTES

Rule 18.1 of the Rules of the United States Supreme Court ..... 7

Rule 18.2 of the Rules of the United States Supreme Court ..... 8

Rule 3(c)(1)(A) of the Federal Rules of Appellate Procedure ..... 1, 2, 7

Chapter 96-192 of the Laws of Florida ..... 4

Section 518.02[2][a] of Moores Federal Practice ..... 8

## STATEMENT OF THE CASE

The Appellants hereby address a number of points contained in the Statements of the Case made by the State Appellees and Intervenor Appellees with which they disagree:

### Designation of Appellant(s)

The Intervenor Appellees identified to the Court an error in the notice of appeal. The caption of the notice lists the name of the first Appellant as "James L. Chandler" while the body of the notice lists the first Appellant as "James L. Moore." In fact, there is no party named James L. Moore in this litigation[1]. James L. Chandler is the correct lead Appellant and the error is solely typographical in nature.

The caption of the case in the district court was Thomas S. Fouts, et al. v. Katherine Harris etc., et al. Thomas S. Fouts was dismissed from the case as part of the settlement which dismissed the claims against the Florida State Senate districts. The caption in the notice of appeal was amended to reflect that James L. Chandler and others were taking an appeal from the district court ruling[2]. Mistakenly, the name "Moore" was inserted after

---

[1] While there is no James L. Moore in this litigation, there was a James D. Moore who was dismissed from the suit upon the motion of the Plaintiffs on August 24, 1999 since he moved from the State of Florida after the commencement of the litigation.

[2] Changing the caption to reflect the names of the appellants is codified as Circuit Court of Appeal practice in Rule

the first name and initial "James L." instead of the name "Chandler". The affidavit of Michael Goldsberry, Esquire, the associate who typed the affidavit, attesting to the typographical error is reproduced in the Appendix to this response. The remaining Appellants to this proceeding were designated in the Notice of Appeal under the phrase "et al."[3]

**Support for Settlement Agreement**

The Intervenor Appellees' statement of the case asserts that the Florida Attorney General opposes the settlement reached between the Plaintiffs and the State of Florida. However, the Florida Attorney General is not a party to this litigation and therefor has neither standing to oppose nor to support the settlement [Intervenor Appellees' Motion, pages 4, 9, and 10 and footnote 8]. The

---

3(c)(1)(A) of the Federal Rules of Appellate Procedure. The rule permits the names of the appellants to be named in the caption or body of the notice of appeal. There is no similar Supreme Court Rule permitting or prohibiting the same procedure.

[3] The Appellants admit to being unaware of this court's decision in *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 108 S.Ct. 2405 (1988) prior to the filing of the Notice of Appeal. Now that it has been brought to their attention, the question is raised whether this court's order of April 22, 1993, amending the Federal Rules of Appellate Procedure, and particularly Rule 3(c)(1)(A) regarding the "Contents of Notice of Appeal" to "reduce the amount of satellite litigation spawned by the Supreme Court's decision in *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988)" reflects an intent by this Court to permit additional parties to be contained under the designation "et al." in proceedings both before the Supreme Court and the Circuit Courts of Appeal, or solely in the Circuit Courts.

Florida Attorney General's office has provided legal services to the Governor and the Florida Secretary of State. However, the Attorney General, who holds an elected post in Florida's Cabinet, was not sued in this litigation and did not seek to intervene as a party. The opinions and positions stated by attorneys who work for the Attorney General have stated their positions in their representative capacities as counsel for the Governor and Secretary of State.

**Time of Bringing District Court Action**

The State Appellees assert that the "Appellant's presentation of subsequent events . . . obscures or misstates certain relevant facts and therefore warrants clarification." Specifically, the State Appellees argue that the Appellants assertion that they brought this action "less than 2 years after the enactment of the permanent redistricting plan" [Appellees' Motion, page 2] somehow misstates the facts. However, the Jurisdictional Statement sought to make clear that the United States District Court, Northern District of Florida enacted an **interim** redistricting plan which was in effect for the 1992, 1994, and 1996 election cycles. Thereafter, the Florida Legislature enacted a **permanent** redistricting plan under which elections were conducted in 1996 and 1998. The Appellants brought their action on April 2, 1998, less than 2 years after the enactment of the permanent (i.e. the legislative) redistricting plan[4].

---

[4] The Appellants did not seek a preliminary injunction barring the 1998 elections in the gerrymandered districts because a similar motion in *Johnson v. Mortham* was denied.

The contours of the 17th, 18th, and 23rd congressional districts are the same under the permanent plan enacted by the Legislature as they were under the judicial interim plan. The legislative enactment of the replacement districting plan is an important event because it constitutes "state action" which was free from judicial compulsion. The passage of Chapter 96-192, Laws of Florida is the first action by the State of Florida implementing congressional districts in the State of Florida during the 1990's. The prior elections were held in districts which the State of Florida was required to adopt by order of the Northern District of Florida.

As Circuit Judge Hatchett stated in his dissent in *Johnson v. Mortham*, 915 F.Supp. 1529, 1559-60 (N.D. Fla. 1995) "the Plaintiffs have [not] pled sufficient 'state action' to support this Court's jurisdiction or to state a claim upon which relief can be granted. . . . In this case, the State of Florida bears no responsibility for the development and implementation of the 1992 redistricting plan. . . . " While the majority found that they had jurisdiction to reconsider the decision in DeGrandy because of a substantial change in the law, Judge Hatchett was correct that initial districts were the product of judicial action.

**Pre-Clearance of Florida Congressional Districts Under Section 5**

The State Appellees state that while Florida congressional districts 9, 11, 12, 13, 14, 16, 20, and 23 require Department of Justice pre-clearance under Section 5 of the Voting Rights Act of 1965, of those, only district 23 is challenged in this action [State Appellees' Motion, page 3

and footnote 1]. However, the Appellees have failed to point out to the court that District 16, 17, 20, and 23 share extensive common boundaries with each other making it impossible to alter the boundaries of one without altering the boundaries of the others, and thereby becoming subject to the preclearance requirements. The "ripple effect" caused by changing any district boundaries makes all South Florida congressional districts effectively subject to Department of Justice pre-clearance.

**"Section 5 Benchmark" Argument was Raised before District Court**

The State Appellees assert the Appellants never made the argument to the district court that their claim was not moot because "the Department of Justice will use the 1992 plan as a bench mark for the 2002 redistricting" [State Appellees Motion, page 6]. This is inaccurate. The Appellees, having no knowledge that the mootness argument was being considered by this Court in *Reno v. Bossier Parish School Board*, ___ U.S. ___, 120 S.Ct. 866 (2000), nevertheless extensively made the same argument in their Motion for Reconsideration[5]. The Appellants' argument to the District Court anticipated the Supreme Court ruling in *Reno v. Bossier Parish School Board*.

---

[5] See section entitled "Continuing Importance of Finding of Unconstitutionality of Racially Gerrymandered Districts in South Florida" in Motion for Reconsideration, pages 10-12.

## ARGUMENT

### JAMES L. CHANDLER IS A PROPER APPELLANT. THE REMAINING APPELLANTS JOINED UNDER THE TERM "ET. AL." ARE EITHER APPELLANTS, OR APPELLEES SUPPORTING THE POSITION OF THE APPELLANT.

James L. Chandler was listed in the caption of the case as an appellant in the notice of appeal. The typographical error which resulted in his being called "James L. Moore" in the body of the notice of appeal does not change Mr. Chandler's standing as a appellant. It is objectively clear from the change in the caption of the case, from the fact that there was no party named "James L. Moore", from the fact that James D. Moore had been voluntarily dismissed from the suit, and from the fact that there is no other party having the first name and middle initial "James L." who appeared in the litigation, that James L. Chandler was appealing the ruling of the district court. As stated in the notes to subdivision (c) of the 1993 Amendments to the Federal Rules of Appellate Procedure, which dealt with the same issue:

> . . . the rule makes it clear that dismissal of an appeal should not occur when it is otherwise clear from the notice that the party intended to appeal. If a court determines it is objectively clear that a party intended to appeal, there are neither administrative concerns nor fairness concerns that should prevent the appeal from going forward.

Where, from the totality of the circumstances surrounding the naming of a party, it can objectively be determined who the proper party is, a misspelling of a name will not be considered material. *Faust v. U.S.*, 163

U.S. 452 (1896). A notice of appeal which lists the name of a party in the caption, rather than in the body, may be treated as the "functional equivalent" of the formal notice demanded by Rule 3. *Smith v. Barry*, 502 U.S. 244 (1992); *McAninch v. Traders Nat'l Bank*, 779 F.2d 466 (8th Cir. 1985) (intent to appeal an order was apparent from the procedural history of the case, [and] the caption on the notice of appeal).

With regard to the remaining Appellants, the problem is somewhat different. Appellants F. Evelyn McLean, Harvey E. Oyer, Jr., Cecile N. Demers, and Charles Bertheas were not separately identified in the notice of appeal but were instead included under the term "et al.". Under *Torres v. Oakland Scavenger Co.*, 487 U.S. 312 (1988), the failure to separately list parties as appellants in a notice of appeal directed to a Circuit Court was jurisdictional in nature and barred the appeal of those appellants under the rules in effect prior to 1993. However, the Federal Rules of Appellate Procedure were amended by Congress in 1993 to eliminate the harsh result of the ruling in *Torres*. See Notes to subdivision (c) of the 1993 Amendments. Under the new Rule 3(c)(1) the appellants may describe the parties appealing using words like "et al." or "all plaintiffs."

Rule 18.1 of the Supreme Court Rules has not been amended to conform it with the procedure set forth in Rule 3(c)(1). However, had this Court, the Judicial Conference, or Congress considered the issue, it is likely that the same rule would have been adopted for Supreme Court proceedings as has been adopted for appeals to the Circuit Courts. The policy considerations which led to the restructuring of the Federal Rules of Appellate Procedure

to eliminate the result in *Torres* are as present in direct appeals to the Supreme Court as they were in appeals to the Circuit Courts.

Under Supreme Court Rule 18.2, a party who is omitted from the notice of appeal may proceed as an appellee supporting the position of the appellant. See *Moore's Federal Practice Section* 518.02[2][a]. If F. Evelyn McLean, Harvey E. Oyer, Jr., Cecile N. Demers, and Charles Bertheas are not deemed to be appellants, then they continue to have standing in this matter as appellees.

## CONCLUSION

The order of the District Court should be reversed and the case remanded for further proceedings consistent with this Court's decision *Reno v. Bossier Parish School Board*, ___ U.S. ___, 120 S.Ct. 866 (2000).

Respectfully Submitted,

G.J. Rod Sullivan, Jr., Esquire
Sullivan & Boyd
501 West Bay Street
Suite 100
Jacksonville, FL 32202
(904) 355-6000
*Attorney for Appellee*

## APPENDIX I.

### Affidavit of Michael Goldberry

1. I am an associate with the firm of Sullivan & Boyd and was assigned responsibility for preparing the Notice of Appeal filed in the District Court in this matter.

2. I personally typed the Notice of Appeal and listed James L. Chandler as the leading appellant in the caption of the case, adding the words "et.al." to reflect the additional appellants F. Evelyn McLean, Harvey E. Oyer, Jr., Cecile N. Demers, and Charles Bertheas.

3. I mistakenly typed the name "Moore" after the first name and middle initial "James L." in the body of the Notice of Appeal but had no intent of appealing in the name of James D. Moore, but only in the name of James L. Chandler.

I make the statements contained in the affidavit subject to the penalty of perjury under the laws of the United States on this 6th Day of April, 2000.

*Original Signed*

Supreme Court, U.S.
FILED
FEB 28 2000
CLERK

(5)

No. 99-1396

IN THE
SUPREME COURT
OF THE UNITED STATES

JAMES L. CHANDLER, et al.,

Appellants,

v.

KATHERINE HARRIS, in her official capacity as Secretary of the State of Florida, et al.

Appellees.

ON APPEAL FROM
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

**OPPOSITION TO APPELLANTS' MOTION FOR CONSIDERATION PRIOR TO CONGRESSIONAL QUALIFYING ON MAY 8, 2000**

The NAACP appellees,[1] the Meek appellees[2] and Congressman Alcee L. Hastings, by and through their undersigned counsel, file the following opposition to Appellants' Motion for Consideration Prior to Congressional Qualifying on May 8, 2000, and state the following:

1 The NAACP appellees are: Florida State Conference of NAACP Branches, Black Business Association, Gerald Adams, George Baldwin, Willie Brown, Alben Duffie, Larry D. Jones, Edwin L. Miller, Frankie S. Rolle, Elry Sands and Carolyn L. Williams.

2 The Meek appellees are: Congresswoman Carrie P. Meek, M. Athalie Range, Betty T. Ferguson, Marleine Bastieu, Dr. Bradford E. Brown, Bennie Moore, Ernest Mae ("Pinky") Sands and Miriam Urra

1. Appellants correctly state in their Motion that they are registered voters in south Florida and that they filed an action on April 2, 1998 invoking the principles of Shaw v. Reno, 509 U.S. 630 (1993). At present, appellants challenge only two Congressional Districts, the 18th and the 23rd Districts.[3] These two Districts were originally established by an Order of a three-judge District Court on May 29, 1992, almost six years prior to the filing of the Complaint. De Grandy v. Wetherill, 794 F. Supp. 1076 (N.D. Fla. 1992). In 1996, the Florida Legislature enacted a state-wide redistricting plan that adopted these two Districts without change from those established by Court Order. The 1992, 1994, and 1996 Congressional elections were held using these Districts.

2. After the Complaint was filed, the 1998 Congressional election was also held using these Districts. The appellants made no effort to obtain preliminary or permanent relief prior to the 1998 Congressional election.

3. In several orders, the District Court permitted (i) the three Congressional Representatives and two State Senators whose Districts were being challenged, (ii) some of their supporters, and (iii) the NAACP appellees to intervene as party defendants to defend the legality of the existing Districts. In other orders, the District Court permitted a Congressman from an adjoining District to intervene solely on issues of relief and the Department of Justice to appear as amicus curiae.

---

[3] At the hearing held by the District Court on October 12, 1999, appellants abandoned their challenges to two State Senatorial Districts and to the 17th Congressional District. (APP. 2, 9). Throughout their Jurisdictional Statement, appellants refer to the 17th, 18th and 23rd Congressional Districts without differentiation and without acknowledgment that they lack standing to challenge the legality of the 17th Congressional District because none of them resides in that District. United States v. Hays, 510 U.S. 737 (1995).

4. In 1999, appellants' counsel negotiated a "settlement" with the counsel for the defendants originally named in the Complaint, all of whom were Florida state officials.[4] As the appellants concede in their Jurisdictional Statement, at p. 9, those "settlement discussions were intentionally conducted without the participation of most of the intervening defendants."[5] The Settlement Agreement would have changed the boundaries of eight Congressional Districts in south Florida, the three challenged in the original Complaint and five others. After the Settlement Agreement was reached, appellants and the appellee state officials moved the District Court for approval of the settlement and obtained postponement of the District Court hearing on pre-trial motions and of the trial date. Two of the appellee state officials, Governor Bush and House Speaker Thrasher subsequently disavowed their agreement to the settlement. (APP. 3.) As a result, the Florida Attorney General opposed the settlement at the hearing.

5. On October 25, 1999, the District Court disapproved the settlement and dismissed the Complaint on the grounds of laches. (APP. 1-10.)

6. After the District Court dismissed the case, appellants did not seek immediate relief from this Court. Instead, appellants waited the maximum ten-day period[6] and filed a "Motion to Alter and Amend Judgment and/or for Reconsideration of Final Order of

---

4 Those state officers, who were sued in their official capacity, were the Secretary of State, the President of the State Senate, the Speaker of the State House of Representatives and the Governor.

5 Also ignorant of the settlement was at least one of the plaintiffs, Charles Bertheas, the only plaintiff with standing to challenge the 23rd Congressional District, which District the 'settlement" proposed to change.

6 See Federal Rules of Civil Procedure, Rule 59(e).

Dismissal on Grounds of Laches" on November 4, 1999. That Motion presented nothing new. As the District Court stated:

> This is the third time that Plaintiffs have made this argument. It has been rejected before, and raises nothing new here. Moreover, in making this argument for the third time, the Plaintiffs once again utterly fail to address the case law cited by this Court in support of the application of laches to the instant case.

(APP 25-26.) The District Court denied this Motion on December 17, 1999.

7. Following the denial of this Motion, appellants again did not seek prompt relief from this Court. Instead, appellants waited twenty-seven days before filing a notice of appeal (APP. 27) and another thirty-six days before mailing a Jurisdictional Statement and the present Motion to this Court. Having taken almost four months from the decision of the District Court on October 25, 1999 to file their Jurisdictional Statement with this Court, appellants now move this Court "to consider the issues raised in their jurisdictional statement ... prior to the opening of qualifying for congressional elections in the State of Florida on May 8, 2000".[7]

8. In their Jurisdictional Statement, appellants raise two issues:

a. whether parties who intervened to defend the existing Districts may bar a settlement between the appellants and the state by withholding their consent; and

b. whether the District Court should have dismissed the action based on laches. The appellants argue that racially gerrymandered election Districts will constitute an ongoing violation because

---

[7] The deadlines for qualifying as a candidate in a Florida Congressional election begin on April 17, 2000, the date by which candidates who wish to qualify by the "alternative" petition method must submit petitions containing signatures from 1% of the registered voters in the geographical area of their candidacy.

those Districts will be used by the Department of Justice following the 2000 census as the baseline for preclearing new election Districts under Section 5 of the Voting Rights Act. On this issue, appellants rely on Reno v. Bossier Parish School District, ___ U.S.____, Docket #98-405 (January 24, 2000).

Because neither issue has merit, the appellees will ask this Court to dismiss this appeal or, in the alternative, to affirm.

9. The appellants' request for an early "consideration of the issues raised" is premised solely on their claim that the District Court wrongly denied the Motion to Approve the Settlement because of the objections of intervenor defendants. Appellants make no claim that they will be prejudiced by any delay in this Court's decision on the second issue stated above, i.e, whether the allegedly illegal Congressional Districts will have a continuing effect after the 2000 census, thus preventing the dismissal of the action on the basis of laches.[8]

10. Appellants' Motion should be denied because appellants failed to seek prompt relief from this Court following the October 25, 1999 dismissal of this action and failed again to seek prompt relief from this Court following the December 17, 1999 denial of their post-

---

[8] As a result, this Opposition will not deal with the laches question except to point out that none of the appellants reside in a County subject to Section 5 of the Voting Rights Act. Hence, whether the Congressional Districts in which they vote will be subject to preclearance will depend upon whether Florida, after considering the 2000 census data, elects to include their residences in Congressional Districts that also include some portion of a County subject to Section 5. Appellants lack standing to make a claim of harm under Section 5 in this action because that claim is both conjectural and hypothetical. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Moreover, appellants' claim in this action is a constitutional one that cannot be prejudiced by any action by the Department of Justice in preclearing Congressional Districts.

trial Motion. After having waited so long before seeking relief from this Court, appellants are presumptuous in asking this Court to adjust its schedule.

11. Appellants' Motion should be denied because it is premised on an erroneous assumption. The Motion implicitly assumes that this Court's "consideration of the issues raised ... prior to May 8, 2000" might result in promulgation by this Court or the District Court of the new Congressional Districts contained in the Settlement Agreement in time for candidates to qualify for Congressional elections in those Districts prior to the deadline for such qualifying on May 11, 2000. This assumption is wrong for three reasons:

(1) A settlement cannot be approved over the objections of those appellees who intervened as defendants in the District Court to defend the legality of the existing districts. As the District Court held (APP. 4), this Court's decision in Lawyer v. Department of Justice, 521 U.S. 567, 117 S. Ct. 2186 (1997) does not provide an exception to this established rule.[9] Lawyer acknowledges that "a settlement agreement subject to court approval in a nonclass action may not impose duties or obligations on an unconsenting party or 'dispose' of his claims." Id. at 2194. In the present case, the intervening appellees' claims that the current Congressional Districts are legal would be adversely disposed of by the proposed settlement.

(2) The settlement was disavowed by certain of the defendant Florida state officials prior to its consideration by the District Court. Indeed, at the hearing before the District Court, the Attorney General urged the Court to disapprove it. Congressional redistricting is in the first instance, a state function.

---

[9] Mr. Lawyer's claims were vindicated by the settlement approved by this Court over his objection. Indeed, this Court characterized him as a "sore winner." Id. at 2194.

Id. at 2192-93. Neither this Court nor the District Court can approve a settlement over the objection of the Florida Attorney General.

(3) Any settlement of this action must be approved by the District Court. Id. at 2193. Because the District Court ruled that the settlement could not proceed without the concurrence of the appellees who had intervened, it never addressed the substance of the objections that those intervenors had raised. Under any interpretation of its authority, the District Court, before it could have approved the Settlement Agreement, was still obligated to consider the substance of those objections. It never did. Even if this Court were to "consider ... the issues raised prior to ... May 8, 2000", there would still not be time for consideration of the proposed Settlement Agreement by the District Court[10] prior to the commencement of the proceedings for the Congressional election to be held this year.

Thus, appellants' assumption is wrong. Even if this Court were to consider the issues raised prior to May 8, 2000, neither this Court, nor the District Court, could grant the appellants the relief they seek, promulgation of the Congressional Districts contained in the Settlement Agreement, prior to the commencement of Florida's Congressional election processes. There is, therefore, no reason for haste.

12. The two Congressional Districts challenged by the appellants were established by a federal District Court and ratified by the Florida Legislature. They are facially

---

10 Among other things, the District Court would have to consider whether to approve Congressional Districts that the appellants themselves described as being "racially-proposed gerrymandered". (See, Plaintiffs' Motion for Summary Judgment on the Liability Phase of Count I of Plaintiffs' Complaint Concerning Congressional Districts dated September 3, 1999, at p. 5, n.8.)

race-neutral and presumptively valid. Hunt v. Cromartie, ___U.S. ____, 119 S. Ct. 1545 (1999). Under the opinions of this Court, appellants would have the substantial burden of proving that race, rather than legitimate legislative or political purposes like preserving incumbents or preserving the partisan balance of the Florida Congressional delegation, was the predominant motive in the creation of those Districts. Id. This Court cannot assume that the appellants would sustain their burden at trial.

WHEREFORE, the appellees listed above respectfully request this Court to deny Appellants' Motion for Consideration Prior to Congressional Qualifying on May 8, 2000.

Dated: February 28, 2000


J. Gerald Hebert, Esquire
Counsel of Record
P.O. Box 22827
Alexandria, Virginia 22304
Phone: (703) 703-567-5873
Fax: (703) 567-5876

Thomasina Williams, Esquire
80 S.W. 8th Street, Suite 1830
Miami, Florida 33130
Phone: (305) 379-6676
Fax: (305) 379-4541

Attorneys for Congresswoman Carrie P. Meek, M. Athalie Range, Betty T. Ferguson, Marleine Bastieu, Dr. Bradford E. Brown, Bennie Moore, Ernest Mae ("Pinky") Sands and Miriam Urra

Terence J. Anderson, Esquire
Counsel of Record
c/o University of Miami School of Law
PO Box 248087
Room 426-27 Old Law
Coral Gables, FL 33124-8087
Phone: (305) 284-2253
Fax: (305) 284-6619

Attorney for Congressman Alcee L. Hastings

Matthew M. Strickler, Esquire
Counsel of Record
Stephen J. Kastenberg, Esquire
Amy B. Carver, Esquire

BALLARD SPAHR ANDREWS
& INGERSOLL, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Phone: (215) 665-8500
Fax: (215) 864-8999

Edward Still, Esquire
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1401 New York Avenue, N.W., Suite 400
Washington, D.C. 20005-0400
Phone: (202) 662-8600
Fax: (202) 783-5130

Attorneys for Florida State Conference of NAACP Branches, Black Business Association, Gerald Adams, George Baldwin, Willie Brown, Alben Duffie, Larry D. Jones, Edwin L. Miller, Frankie S. Rolle, Elry Sands and Carolyn L. Williams